Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

KEITH ALAN LEHTO,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The Texas Court Of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. WHETHER PETITIONER'S DUE PROCESS RIGHTS, UNDER THE FOURTEENTH AMENDMENT, AS WELL AS THE PETITIONER'S RIGHTS OF CONFRONTATION UNDER THE SIXTH AMENDMENT, WERE VIOLATED BY PROHIBITING DEFENSE COUNSEL FROM CROSS-EXAMINING THE ALLEGED VICTIM BY DOCUMENTATION CLEARLY REVEALING THAT PETITIONER DID NOT HAVE THE CRIMINAL INTENT TO COMMIT THEFT

2. WHETHER PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS, UNDER THE FOURTEENTH AMENDMENT, BY THE TRIAL COURT'S REFUSAL TO ADMIT INTO EVIDENCE PETITIONER'S GRAND JURY TESTIMONY, THUS DEPRIVING PETITIONER OF A MEANINGFUL OPPORTUNITY TO BE HEARD, ESPECIALLY WHEN THE PROSECUTING ATTORNEY QUESTIONED PETITIONER AT LENGTH DURING THE PETITIONER'S GRAND JURY TESTIMONY

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PETITION FOR A WRIT OF CERTIORARI

KEITH ALAN LEHTO, by and through his attorney of record, petitions for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals.

OPINION BELOW

The opinion of the Texas Court of Appeals is attached hereto as Appendix B, pages 1-5. This opinion is not being reported.

A Petition for Discretionary Review was subsequently filed by Petitioner with the Texas Court of Criminal Appeals. The refusal to grant such Petition for Discretionary Review is attached hereto as Appendix C. Moreover, a Motion For Rehearing, filed by the Petitioner, was denied on the 30th day of August, 2000, by the Texas Court of Criminal Appeals, and is attached hereto as Appendix D.

JURISDICTION

The Motion for Rehearing, regarding Petitioner's Petition for Discretionary Review, was denied on the 30th day of August, 2000 by the Texas Court of Criminal Appeals. Jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; **to be confronted with the witnesses against him**; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defense (emphasis added).

2. The Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws (emphasis added).

3. FED.R.CRIM.P.6(e)(3)(C)(i) provides:

> Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made – (i) when so directed by a court

preliminarily to or in connection with a judicial proceeding;

4. TEX.CODE CRIM.PROC.ANN. Art. 20.04 provides:

> The attorney representing the State may examine the witnesses before the grand jury and shall advise as to the proper mode of interrogating them. No person other than the attorney representing the State or a grand juror may question a witness before the grand jury. No person may address the grand jury about a matter before the grand jury other than the attorney representing the State, a witness, or the accused or suspected person or the attorney for the accused or suspected person if approved by the State's attorney.

5. TEX.CODE CRIM.PROC.ANN. Art. 1.04 provides, in pertinent part:

> No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

6. TEX.CODE CRIM.PROC.ANN. Art. 1.05 provides:

> In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. No person

shall be held to answer for a felony unless on indictment of a grand jury.

7. FED.R.EVID. 401 provides:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

8. TEX.R.EVID. 401 provides:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

9. TEX.R.EVID. 402 provides:

All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

10. TEX.R.EVID. 801(e)(2)(A) provides, in pertinent part:

Statements Which Are Not Hearsay. A statement is not hearsay if: . . . (2) *Admission by party-opponent*. The statement is offered against a party and is: (A) the party's own statement in either an individual or representative capacity.

11. FED.R.EVID. 804(b)(3) provides, in pertinent part:

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is

> unavailable as a witness: . . . (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

12. FED.R.EVID. 801(d)(2)(A) provides, in pertinent part:

> (d) Statements which are not hearsay. A statement is not hearsay if – (2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity.

13. TEX.R.EVID. 802 provides:

> Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objections shall not be denied probative value merely because it is hearsay.

STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised can be briefly stated:

Course of Proceedings and Disposition Below

The Petitioner was charged by indictment with two counts of Theft Over $1,500 But Less Than $20,000 (C.R. 3-4). To the indictment, Petitioner pled "Not Guilty" to a jury. The jury found Petitioner "Guilty", as alleged in the indictment, and the trial court assessed punishment at two years in the State Jail Division of the Texas Department of Criminal Justice, and ordered restitution to be paid (C.R. 131-133). A timely notice of appeal was filed by Petitioner (C.R. 135-136). In addition, a Motion For New Trial was filed (C.R. 139-140), with Defendant's First Amended Motion For New Trial also being filed (C.R. 145-147). A timely Second Amended Motion for New Trial was also filed (C.R. 149-151). The Motion For New Trial was denied (C.R. 152).

Timely notice of appeal was given to the Texas Court of Appeals sitting in El Paso, Texas. The Court of Appeals affirmed the conviction and sentence. Petitioner timely filed a Petition for Discretionary Review with the Texas Court of Criminal Appeals, which was refused. Petitioner then timely filed a Motion For Rehearing, regarding such Petition for Discretionary Review, which was denied on the 30th day of August, 2000.

Statement of Facts

The Petitioner, having been charged with two counts of theft over $1,500.00 but under $20,000.00, was brought to trial on November 16, 1998 (R.R. 3 5-6).

Ronyld Wise, owner of Petroleum Listing Service, Incorporated (PLS) hired Petitioner as Operations Manager the first week of January, 1996 (R.R. 3 15). Petitioner was in charge of accounting (R.R. 3 104-105). There was no employment contract between PLS and Petitioner (R.R. 3 44).

Petitioner and David Fowler went to work at PLS at about the same time (R.R. 3 77). Fowler was unaware of any work contract or agreement between Ronyld Wise and Petitioner (R.R. 3 93).

David Fowler was Wise's "right hand man" and when Wise traveled, Fowler, was in charge (R.R. 3 45). Wise and Fowler were frequently together and were quite close (R.R. 4 85). However, during these times, Wise remained in close communication with David Fowler (R.R. 3 45). Ronyld Wise knew what was going on with respect to income and expenses (R.R. 3 90-91; R.R. 4 98) and had close control over PLS (R.R. 4 81).

Although David Fowler was authorized to sign checks for PLS (R.R. 3 46), Fowler did not have a stash of blank checks on hand (R.R. 4 82). If someone needed money for supplies, Fowler would sign a check (R.R. 4 119).

PLS check number 8987 in the amount of $11,400.00 was made payable to and endorsed by Petitioner (R.R. 3 21). Written on check number 8987 was: "Tied to 20040

Lehto," which is a credit line from Midland American Bank to PLS (R.R. 3 29). This check was in turn endorsed over to Lone Star, a local abstract company (R.R. 3 111-112). Ronyld Wise denied Petitioner had permission to take money out of the business account through check number 8987 (R.R. 3 21). David Fowler testified that he did indeed sign check number 8997 but denied that he made it payable to Petitioner (R.R. 3 84).

Ronyld Wise denied that Petitioner had authorization to take money out of the business account by way of check number 8980 in the amount of $4,100.00 which was made payable to and endorsed by Petitioner (R.R. 3 22). On the bottom of check number 8980 was written: "Wise-Lehto note 1-24-96" (R.R. 3 27). Cindy Richardson of Midland Atlantic Federal Credit Union testified that this check was deposited into the account of Keith and Shelly Lehto (R.R. 4 10). David Fowler testified that he signed a blank check number 8980 but denied making it payable to Petitioner for $4,100.00 (R.R. 3 77). David Fowler gave Petitioner this check because he believed it was for postage (R.R. 3 80).

Former employees Daniel Koonce and Sharon Miller testified that it was not one of Petitioner's duties to go to the post office (R.R. 4 83; R.R. 3 96). Miller further testified that checks were typically made out to the U.S. Postmaster (R.R. 4 96). Further, Miller never saw David Fowler sign a check for Petitioner (R.R. 4 120).

Ronyld Wise testified that he did agree to loan Petitioner $900.00 as a down payment on a house (R.R. 3 23). PLS had loaned employees money before (R.R. 3 41-42).

David Fowler had also borrowed money from PLS (R.R. 3 91).

Dana Beikirch, owner of West Texas Mortgage (R.R. 4 22), testified she first met Petitioner in January, 1996 through a letter in which he requested a home loan (R.R. 4 24).

Beikrich never complained about Petitioner doing anything wrong with the home loan (R.R. 4 36) and Beikrich had no personal knowledge that anything on any loan application in terms of a statement was false (R.R. 4 38).

The home loan through Petitioner and Beikrich's company closed (R.R. 4 35). Beikrich, however, would have never closed on the loan had she known the down payment came from a credit line (R.R. 4 39).

Dale Brown and John Paul Pitts both testified that their opinion as to Ronyld Wise's truthfulness and veracity was bad (R.R. 4 72; 77). Daniel Koonce testified that Ronyld Wise's reputation for honesty and fair dealing is bad (R.R. 4 86).

Sharon Miller worked at PLS for nine months and answered the phones, made out the deposit slips, prepared the balance sheets, paid the bills and had access to the bank statements (R.R. 4 94-95; 97). Petitioner never asked Miller to take anything off of the balance sheets (R.R. 4 97) or to take a check out of the bank statement (R.R. 4 97). The bank statements were available to Ronyld Wise for inspection (R.R. 4 97).

Petitioner told Sharon Miller about a loan to him from PLS and never asked her to not tell David Fowler or

Ronyld Wise about this loan (R.R. 4 98). Sharon Miller recalled the loan being on the balance sheet (R.R. 4 98-99) and that the loan files were kept in a folder tabbed "Note, MAB20040" in the office file cabinet (R.R. 4 126).

Miller testified that Ronyld Wise never expressed surprise about Petitioner's home loan through the credit line (vol. 4 102, l. 8-11).

The check for $11,400.00 was discovered missing from the bank statement by Miller who was then told by Petitioner to put it on the bank credit line (R.R. 4 116).

Petitioner paid the monthly interest on the credit line each month (R.R. 4 100). Ronyld Wise testified that he was not aware that Petitioner was making the monthly interest payments to Midland American Bank on money borrowed from credit line 20040 (R.R. 3 38-39).

Petitioner was found guilty of theft over $1,500.00 but under $20,000.00, as charged in counts one and two of the indictment (R.R. 5 55), and was sentenced to two years in the State Jail Division of the Texas Division of Criminal Justice and ordered to pay $15,500.00 in restitution (R.R. 6 34).

REASONS FOR GRANTING PETITION

This case presents important questions concerning (1) whether the Petitioner's right to confrontation under the Sixth Amendment and the due process rights under the Fourteenth Amendment were violated by the trial court refusing to permit Petitioner to cross-examine the alleged victim regarding written contractual agreements,

between the alleged victim and the Petitioner, **clearly revealing that Petitioner did not and could not have had the criminal intent to commit theft**; and, (2) whether the due process rights of the Petitioner, under the Fourteenth Amendment, including the right to have a meaningful opportunity to be heard and to present a defense, were violated by the refusal of the trial court to permit the Petitioner's grand jury testimony to be introduced as evidence, when the prosecuting attorney questioned the Petitioner during his appearance before the grand jury, at length, especially considering FED.R.CRIM.PROC. 6(e)(3)(C)(i). Additionally, FED.R.EVID. 802 as well as TEX.R.EVID. 802, which are identical, violate the Petitioner's rights to due process under the Fourteenth Amendment as well. **This Honorable Court has never published an opinion as to the Second Question Presented,** that counsel for Petitioner can find, **and the cases are conflicting as to the First Question Presented**.

As to the First Question Presented, the Petitioner asserts the trial court committed reversible error by refusing to receive into evidence Defendant's Pre-Trial Exhibits Three through Eight, during the jury trial, which were sought to be received into evidence during cross-examination of the complainant, Ronyld Wise, in violation of the Petitioner's right of confrontation under the Sixth Amendment and his right to due process under the Fourteenth Amendment.

Petitioner was indicted in two counts of Theft Over $1,500 But Less Than $20,000, alleging that Petitioner appropriated such money without the effective consent of the alleged victim, Ronyld Wise (C.R. 3-4). The dates of the alleged thefts were January 24, 1996 and February 19,

1996 (C.R. 3-4). To show the jury, or at least provide a small nudge with regard to whether or not Petitioner had the criminal intent to steal from Ronyld Wise, are various defense exhibits which were marked as Defendant's Pre-Trial Exhibits Three through Eight (R.R. 7 Defendant's Pre-Trial Exhibits Three through Eight). Indeed, on cross-examination of Ronyld Wise, during the jury trial, defense counsel attempted to cross-exam the said Ronyld Wise regarding Defendant's Pre-Trial Exhibits Three through Eight (R.R. 3 47-49). The trial court sustained the State's objection to admission of these defense exhibits regarding cross-examination of such key State's witness, Ronyld Wise, from being cross-examined regarding Defendant's Pre-Trial Exhibits Three through Eight in front of the jury (R.R. 3 47-49).

Defendant's Pre-Trial Exhibits Three through Eight, especially Defendant's Pre-Trial Exhibits Six, Seven and Eight, would have been relevant under TEX.R.EVID. 401 and 402, with such relevance shown as set forth in a hearing outside the presence of the jury by defense counsel:

> "[Defense Counsel]: Your Honor, if I could be heard. I do have what I would like to tender to the Court, various documents that directly affect the State's Motion in Limine.
>
> The one I'm about to tender to the Court contain crucial agreements between Ron Wise, the alleged victim in the indictment, and Keith Lehto, this Defendant.
>
> In two places – one is in a purchase agreement, called Asset Purchase Agreement, Convention and Exposition Business, dated August 8, 1996,

as well as an agreement dated September 5, 1996, which I must state were prepared at the direction of Ron Wise, not Keith Lehto, although both of them signed both agreements.

This is what Ron Wise had in his two agreements. He had hold harmless agreements that state that an indemnification of buyer – the buyer being Keith Lehto – that any and all claims, damages, losses, liabilities, payments, costs, obligations and expenses – it is just a hold harmless agreement.

Now part of this agreement includes secured instruments previously signed by the parties, including the deed of trust signed by Keith Lehto with regard to home loan.

Now common sense says that Ron Wise would have not caused an attorney, I believe Mike Canon, here in town, to prepare these two documents, including this August 6, 1996, hold harmless agreement, part of the overall agreement, indemnification of the buyer, Keith Lehto, if Ron Wise believed Keith Lehto had stolen $17,000 from him. He wouldn't have put that in there.

That shows knowledge on Ron Wise's part. He knew he had not been stolen from. And I think that's very significant. That goes to show whether or not Keith Lehto took this money without his effective consent.

Also, as part of the overall agreement, PLS Publications, Incorporated of which Keith Lehto is the sole shareholder, would assume this credit line called Credit Line 20040, which is the money involving this home loan.

In other words, Keith Lehto was saying, assuming this agreement goes through – I assume that it will – PLS Publications – not you, Ron Wise; not your company, PLS, Incorporated; is selling out to PLS Publication; is legally liable to pay this money back on this Midland America Bank credit line.

And that goes to show Keith Lehto's intent. He did not intend to steal or appropriate property, money, from Ron Wise without his effective consent. That shows he did not have the intent to deceive Ron Wise, if he – if they agree that Keith Lehto be responsible for that – the repayment of that credit line, of that loan, where the loan money came from.

I also have a case here of Henderson versus State from the El Paso Court of Appeals, 906 Southwestern 2d, page 589, which states in pertinent part, 'Evidence need not by itself prove or disprove a particular fact to be relevant. It is sufficient if the evidence provides a small nudge toward proving or disproving some fact of consequence,' pursuant to Rule 401 of the Rules of Evidence.

Clearly, a small nudge is being provided by this sales contract between Keith Lehto and Ron Wise, if Ron Wise says I'm going to hold you harmless, Keith Lehto; and Keith Lehto says, as part of the agreement I will pay that loan back to Midland American Bank, Ron Wise.

It shows no intent to deceive, and shows consent by Ron Wise. It goes to two critical elements which the State would have to prove beyond a reasonable doubt. I think a small nudge has certainly been provided.

> And I would like to tender to the Court all these various agreements."

(emphasis added) (R.R. 2 20-23).

The right of an accused, in a criminal trial, to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. ***Chambers v. Mississippi***, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). Moreover, the rights to confront and cross-examine prosecution witnesses are essential to due process. ***Chambers v. Mississippi, supra***. The trial court has discretion to admit or deny motive evidence, which is **limited** by a defendant's due process right to present a defense and his Sixth Amendment right of confrontation. ***United States v. Whitman***, 771 F.2d 1348 (9 Cir. 1985).

The right of confrontation necessarily includes the right to cross-examine a prosecution witness. ***Carroll v. State***, 916 S.W.2d 494 (Tex.Crim.App. 1996); ***Thomas v. State***, 897 S.W.2d 539 (Tex.App. – Fort Worth 1995, no pet.). Indeed, the essential policy underlying the Sixth Amendment's right of confrontation is to give the accused the opportunity to cross-examine witnesses against him. ***Harris v. State***, 642 S.W.2d 471 (Tex.Crim.App. 1982). And, the constitutional right of confrontation is **violated** when appropriate cross-examination is limited. ***Carroll v. State***, 916 S.W.2d at 497.

Importantly, **extreme prejudice** ensues from the denial of the opportunity to place a material witness in his proper setting regarding the testimony of such witness. ***Harris v. State***, 642 S.W.2d at 476.

The scope of appropriate cross-examination is necessarily broad; indeed, a defendant is entitled to pursue all

avenues of cross-examination reasonably calculated to expose a motive, bias or interest for a witness to **testify.** ***Carroll v. State,*** 916 S.W.2d at 497; ***Lewis v. State,*** 815 S.W.2d 560 (Tex.Crim.App. 1991). This includes **any** fact and circumstance which, when tested by human experience, tends to show that a witness may shade his testimony for the purpose of helping to establish one side of the cause only. ***Carroll v. State,*** 916 S.W.2d at 497; ***Jackson v. State,*** 482 S.W.2d 864 (Tex.Crim.App. 1972). And, cross-examination is by nature exploratory and there is no general requirement that the defendant indicate the purpose of inquiry; indeed, a defendant should be granted a **wide latitude**, even if he is unable to state what facts he expects to prove through his cross-examination. ***Carroll v. State,*** 916 S.W.2d at 497. Moreover, when a cross-examiner is improperly denied the opportunity to ask a question and receive the answer of a witness for consideration by the fact finder, such cross-examiner may concomitantly be denied the right to establish facts which would illustrate the true circumstances on the issue of extraneous proof and, in such a case, the right of the accused to effective confrontation is thoroughly frustrated. ***Harris v. State,*** 642 S.W.2d at 477.

With regard to "relevant evidence", FED.R.EVID. 401 states as follows:

> " 'Relevant evidence' means evidence having **any** tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" (emphasis added)

Petitioner's Pre-Trial Exhibits are relevant, especially to show (1) Petitioner's state of mind, and (2) the exhibits show that Petitioner did not appropriate any property without the effective consent of Ronyld Wise.

Indeed, **federal convictions have been reversed for the refusal to permit an accused to introduce evidence showing no criminal intent, including intent to steal or defraud**. In ***United States v. Riley***, 550 F.2d 233 (5 Cir. 1977), a conviction for misapplication of money was **reversed because documents showing the defendant did not have the intent to defraud were wrongfully excluded**. Other cases in which convictions were reversed include: ***United States v. Lueden***, 812 F.2d 179 (5 Cir. 1987) (**documents wrongfully excluded** regarding issue of whether false statements were material); ***United States v. Garvin***, 565 F.2d 519 (8 Cir. 1977) (**wrongful exclusion of documents** evidencing lack of criminal intent in mail fraud prosecution); ***United States v. Watson***, 669 F.2d 1374 (11 Cir. 1982) (exclusion of defense witnesses to impeach prosecution's key witness constituted reversible error). See also ***United States v. Pollard***, 790 F.2d 1309 (7 Cir. 1986).

Moreover, constitutional error mandates reversal unless the error is harmless beyond a reasonable doubt, ***United States v. Watson***, 669 F.2d 1374 (11 Cir. 1982), and the evidence showing intent to steal is far from overwhelming.

The Federal and Texas Rules of Evidence favor admission of all logically relevant evidence, i.e., evidence that has any tendency to make the existence of any fact of consequence, to a determination of the action, more or

less probable. ***Blakeney v. State***, 911 S.W.2d 508 (Tex.App. – Austin 1995, no pet.).

The test of the relevancy of evidence, in a criminal case, is whether a reasonable person, with some experience in the real world, would believe that a particular piece of evidence is helpful in determining the truth or falsity of any fact that is of consequence to a lawsuit. ***Teer v. State***, 895 S.W.2d 845 (Tex.App. – Waco 1995, State's pet. improvidently granted 923 S.W.2d 111).

Very importantly, the Texas Court of Appeals has held that evidence need not by itself prove or disprove a particular fact to be "relevant"; indeed, it is sufficient if the evidence provides **just a small nudge** toward proving or disproving some fact of consequence. ***Contreras v. State***, 915 S.W.2d 510 (Tex.App. – El Paso 1995, pet. ref'd).

Moreover, for evidence of a fact to be relevant, the fact itself does not have to be in dispute; rather, the fact must only have something to do with the ultimate determination of guilt or innocence. ***Palomo v. State***, 925 S.W.2d 329 (Tex.App. – Corpus Christi 1996, no pet.).

And, appellate courts look at the purpose for offering the evidence and whether there is a direct or logical connection between the offered evidence and the proposition to be proved in determining relevancy. ***Van Zandt v. State***, 932 S.W.2d 88 (Tex.App. – El Paso 1996, pet.ref'd).

Additionally, although it may not necessarily influence consequential facts, **background evidence is relevant.** ***Calloway v. State***, 818 S.W.2d 816 (Tex.App. –

Amarillo 1991, pet.ref'd); ***Brockway v. State***, 853 S.W.2d 174 (Tex.App. – Corpus Christi 1993, pet.ref'd).

And, generally all facts tending to show bias, interest, prejudice or any other motive, or mental state of a witness, which fairly considered and construed might even remotely tend to effect the credibility of a witness, **should be admitted into evidence.** ***Green v. State***, 831 S.W.2d 89 (Tex.App. – Corpus Christi, no pet.).

Very importantly, it is well established Texas law, in a theft case, that circumstances **after** a transaction are admissible; indeed, circumstances prior, after and at the time of the transaction are to be considered by the trier of fact in determining the intent of the accused to appropriate property to the use of the accused without the consent of the owner. ***Hoovel v. State***, 69 S.W.2d 104 (Tex.Crim.App. 1934). **This includes the crucial "hold harmless" agreement Ronyld Wise prepared, in which Wise and Petitioner approved, which Petitioner was prohibited from utilizing on cross-examination of Ronyld Wise.**

It is also well established Texas law that the intent with which the property was taken is to be arrived at by considering all the circumstances **immediately or remotely** attending the taking that may have been relevant thereto. ***Jinks v. State***, 5 Cr. R. 68 (Tex.Crim.App. 1878); ***McNair v. State***, 14 Cr. R. 78 (Tex.Crim.App. 1883).

Additionally, the defendant may rebut the State's evidence tending to show fraudulent intent by any facts and circumstances which may tend to show that the accused took the property without such fraudulent intent. ***Wills v. State***, 40 T. 69 (Tex.Crim.App. 1874); ***Smith v.***

State, 41 T. 168 (Tex.Crim.App. 1874); ***Bawcon v. State***, 41 T. 189 (Tex.Crim.App. 1874).

And, evidence of assumed name certificates, executed by the defendant, is admissible to impeach his claim that he did not have any knowledge about the real estate business, and did not realize that one cannot borrow on one's homestead when he entered into an allegedly fraudulent transaction with another. ***Villanueva v. State***, 768 S.W.2d 900 (Tex.App. – San Antonio 1989, pet.ref'd). Logic and common sense dictate the reverse must also be true, with regard to the admissibility of evidence, to show that no criminal intent nor knowledge by the accused existed, as well as such testimony should be admitted to show that the victim's testimony is not believable or, at least, less believable.

Very importantly, Texas law favors the admission of evidence, ***Caballero v. State***, 919 S.W.2d 919 (Tex.App. Houston [14th Dist.] 1996, pet.ref'd), and there is a presumption, under Texas law, of the admissibility of relevant evidence. ***Silvestre v. State***, 893 S.W.2d 273 (Tex.App. Houston [1st Dist.] 1995, pet.ref'd).

Logic, reason, and common sense dictate that Ronyld Wise would **not** cause an attorney to prepare, at the direction of Ronyld Wise, hold harmless agreements for he and Petitioner to have executed regarding Petitioner buying out the corporation of Ronyld Wise; indeed, such buyout agreement, including the asset purchase agreement, provides at least a small nudge toward showing that Petitioner did not have the intent to steal from Ronyld Wise, and that Ronyld Wise knew that Petitioner did not steal from the said Ronyld Wise.

Therefore, for the reasons set forth above, Petitioner was deprived of presenting crucial documents and cross-examination to rebut the victim, Ronyld Wise, in violation of the Petitioner's rights of confrontation under the Sixth Amendment and rights to due process under the Fourteenth Amendment. Moreover, such errors are certainly not harmless beyond a reasonable doubt. Accordingly, this Petition for Writ of Certiorari should be granted, and a new trial should be ordered.

As to the Second Question Presented, Petitioner asserts, for the reasons set forth below, that the trial court committed reversible error, in violation of Petitioner's right to due process under the Fourteenth Amendment, by refusing to admit into evidence Petitioner's grand jury testimony. Petitioner testified, before the Midland County, Texas grand jury, on the 5th day of March, 1997. Such grand jury testimony, which was offered into evidence during the case-in-chief, was marked as Defendant's Exhibit Number 10, and consists of 80 pages (R.R. 7).

During the early stages of Petitioner's grand jury testimony, the prosecuting attorney did warn Petitioner of his "Miranda" rights, and rights of an accused testifying before a grand jury (R.R. 7, Defendant's Exhibit Number 10 2-4). Petitioner understood his rights, and knowingly and voluntarily waived such rights, desiring instead to testify before the grand jury and answer questions regarding the allegations which are set forth in this indictment (C.R. 3-4) from the prosecuting attorney. (R.R. 7 Defendant's Exhibit Number 10 3-4).

The prosecuting attorney appeared and asked many questions of Petitioner regarding the allegations set forth in the indictment (Defendant's Exhibit Number 10 2-60). Indeed, the prosecuting attorney asked Petitioner, under oath, with regard to Petitioner's employment duties at PLS, Inc.; how Petitioner met Ronyld Wise; the terms of Petitioner's employment with PLS, Inc.; what Petitioner could and could not do with regard to business checks of PLS, Inc.; specifically about four checks, to-wit: $900; $11,400; $4,100; and $600; the notation and wording on each check of which Petitioner was, in part, the maker; what checks David Fowler, another employee of PLS, Inc. signed; the nature and extent of the agreement which Petitioner and Ronyld Wise made with regard to the down payment on Petitioner's home; what Petitioner did with the checks he received, including the $11,400 check and $3,500 check drawn on the business account of PLS, Inc.; what constituted the down payment Petitioner actually made on the house he purchased in Midland; who the lender was on Petitioner's residence; Petitioner's salary and pay raises; and, credit line 20040, which is the credit line from Midland American Bank to PLS, Inc. (Defendant's Exhibit No. 10 2-42).

With regard to Petitioner's answers to questions propounded to him by the State, Petitioner testified that (1) the terms of Petitioner's original employment was that this was a "six month goal and standard to get the items straight that we wanted to get straight. He had negotiated me to a position of about – I don't know it was twenty-three or twenty-seven hundred, my first starting, and he said that he would be willing to help me with my home loan as part of the deal, and we would go from

there and work forward"; (2) Petitioner told Ronyld Wise the amount of the loan that he needed, which was about ten or so thousand dollars, and Ronyld Wise "did not bark at it"; (3) there is a check for $900.00, made payable to Petitioner, and was signed by Ronyld Wise, Petitioner took the check in to Ronyld Wise, presented it to Ronyld Wise, which Ronyld Wise signed and gave it back to Petitioner; this $900.00 check was the first part of the note on the house down payment (regarding Petitioner's home purchase in Greentree, Midland, Texas). This check was then put into escrow; (4) this $900.00 was not money that Ronyld Wise simply "gave" to Petitioner; rather, Ronyld Wise and Petitioner had an argument on the home loan, which was going to be approximately $10,000 or $11,000 at that point; (5) and, Petitioner had sent some correspondence, called Exhibit "A" at the grand jury, which is a memo from Petitioner to Ronyld Wise. Petitioner gave this memo to Ronyld Wise, and this letter was left on the desk of Ronyld Wise by Petitioner in a package on December 26, 1995; (6) on December 26, 1995, Petitioner's wife worked for Ronyld Wise, and Petitioner went to Ronyld Wise's office regarding SBA loan package that Petitioner had been working on for Ronyld Wise; (7) apparently, Petitioner's wife put the brown envelope on Ronyld Wise's desk rather than on Petitioner's desk; (8) Petitioner began working on the SBA loan some 45-60 days before actually beginning work for PLS, Inc.; (9) there is Exhibit "D", which is a unilateral promissory note from Petitioner to Ronyld Wise at 7%; (10) the money which Petitioner was receiving, with regard to the down payment on his home, came from a letter of credit at Midland American Bank; (11) Petitioner recalls draws

from Midland American Bank for $4,100 and $11,100; (12) the $11,100 check is changed to $11,400; (13) the $11,400 was signed by David Fowler; (14) the original checks, regarding the down payment on Petitioner's home, are in the PLS files; (15) these checks given to Petitioner were in a vendor file rather than kept in the bank statements; (16) there is also a $600 check, made payable to Petitioner, from PLS, Inc., which is also in a vendor file in the accounting office, with all of these checks along with a green ledger sheet; (17) the $11,400 check, as well as the $4,100 check, all went to the $17,000 note that Petitioner made, which comprised the home loan; (18) the money was loaned by Ronyld Wise and PLS, Inc; (19) some of the checks to Petitioner were hand-written, some were type-written and some were computer-written; (20) the $11,400 check was already typed and filled in when David Fowler signed it, as David Fowler was not in the practice of signing blank checks; (21) on the $11,400 check are the words "Ron Wise/Lehto Agreement", with the credit line number on it; (22) the $4,100 check, made payable to Petitioner and dated January 24, 1996, was completely made out with the date and amount, as well as payable to Petitioner, when David Fowler signed it. On the bottom left hand corner, it states "Wise/Lehto Note". This was in Petitioner's hand writing; (23) Petitioner does not recall if the words "Wise/Lehto Note" were already on the check when David Fowler signed it; (24) the $600 check, made payable to Petitioner, and dated March 2, 1996, had the notation of "remainder, credit line 20040, Lehto/Wise Agreement, house"; (25) all of this $600 check was filled in, with regard to who it was made payable to, amount, date, and the memo on the bottom left hand corner before

David Fowler signed it; (26) the checks for $11,400, $4,100 and $600 were all deposited into Petitioner's personal account; (27) the check for $900 to Petitioner was signed by Ronyld Wise, and is dated January 5, 1996, with the words "Wise/Lehto Deal/Note", and everything was filled out completely, including this memo, when Ronyld Wise signed it; (28) all four checks were deposited into Petitioner's checking account and then used to make the down payment on the house; (29) the $17,000 went to the title company, Lone Star Title Company; (30) with regard to the home loan from Ronyld Wise and PLS, Inc., Petitioner said that "we had the initial documentation that we exchanged and our hand-shake"; (31) Petitioner goes into the SBA loan he was trying to get for Ronyld Wise; (32) the lender on Petitioner's home in Greentree of Midland was Ford Mortgage, and that is who Petitioner still pays his house payments to; and, (33) the $11,400 check Petitioner turned around and used to buy a cashier's check to take to closing.

Pursuant to TEX.CODE CRIM.PROC.ANN. Art. 20.04 (Vernon Supp. 1998-1999), the prosecuting attorney examined Petitioner, before the grand jury, **at length**, and Petitioner answered every question which the prosecutor asked him (R.R. 7 Defendant's Exhibit No. 10 2-42 – Grand Jury Testimony of Keith Lehto taken March 5, 1997).

After the State rested, Petitioner offered into evidence Petitioner's grand jury testimony, in its entirety, with the same prosecuting attorney who questioned Petitioner before the grand jury being the lead prosecutor at Petitioner's jury trial (R.R. 4 132-138). Although the State certainly asked many questions of Petitioner regarding

the allegations of the indictment, and it being evident the State was not prejudiced from admission of Petitioner's grand jury testimony because the State was there to ask questions, warn Petitioner of his rights, and to hear Petitioner's answers, the State nevertheless objected to admission of Petitioner's grand jury testimony (R.R. 4 132-138). One case revealing that Petitioner's grand jury testimony should have been admitted before the jury, realizing that "fair play is the essence of 'due process,' " is ***Galvan v. Press***, 347 U.S. 522, 74 S.Ct. 737, ___ L.Ed.2d ___ (1954), especially considering that the State examined Petitioner at **great length** regarding the allegations in the indictment during Petitioner's grand jury testimony (R.R. 7 Defendant's Exhibit Number 10 2-42).

The testimony of a defendant, given at another trial or hearing, is admissible, whether such defendant elects to testify in his own defense or not. ***United States v. Booth***, 399 F.Supp. 975 (D.C.S.C. 1975). Indeed, grand jury testimony has been held admissible even if the prosecution failed to give the defendant the warning of rights prior to such grand jury testimony, so long as the defendant did not establish either a coercive or custodial setting. ***United States v. Reed***, 631 F.2d 87 (6 Cir. 1980). See also ***United States v. Lopez***, 621 F.Supp. 1106 (D.C.Ill. 1985) and ***United States v. Cooke***, 673 F.Supp. 137 (D.C.Del. 1987).

FED.R.CRIM.PROC. 6(e)(3)(C)(i) states as follows:

> "Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made – when so directed by a court preliminary to or **in connection with a judicial proceeding**" (emphasis added)

Thus, the Federal Rules of Criminal Procedure apparently permit introduction into evidence of grand jury testimony, since a jury trial is a judicial proceeding.

Importantly, the Sixth Circuit has held that grand jury testimony is admissible even if such testimony amounts to a denial of the facts the prosecution wished to prove. ***United States v. Slone***, 833 F.2d 595 (6 Cir. 1987).

And, a defendant's grand jury testimony is admissible because such grand jury testimony is not hearsay, but is an admission by such defendant under FED.R.EVID. 801(d)(2)(A). ***United States v. Innamorati***, 996 F.2d 456 (1 Cir. 1993). Thus, Petitioner's grand jury testimony was likewise admissible, as an admission, pursuant to TEX.R.EVID. 801(e)(2)(A).

Additionally, grand jury testimony has been admitted as long as there is a sufficient indicia of reliability, ***United States v. West***, 574 F.2d 1131 (4 Cir. 1978), with such grand jury testimony being admissible under FED.R.EVID. 804(b)(3). And, when considering the grand jury testimony of Petitioner, such testimony on its face possesses sufficient indicia of reliability.

Although there is very little Texas case law regarding admissibility of grand jury testimony, the Corpus Christi Court of Appeals admitted into evidence the grand jury testimony of the defendant, in a subsequent criminal proceeding to the grand jury testimony, when such defendant was informed and understood his privilege against self-incrimination at the beginning of such grand jury testimony and voluntarily waived such privilege. ***Lozada***

v. Mendoza, 951 S.W.2d 39 (Tex.App. – Corpus Christi 1997, no pet.).

TEX.R.EVID. 802 states the following:

> "Hearsay is not admissible except as provided by statute or these rules or by other rules prescribed pursuant to statutory authority. Inadmissible hearsay admitted without objection shall not be denied. Inadmissible hearsay admitted without objection shall not be denied probative value, because it is hearsay."

However, Rule 802 violates Petitioner's right to due process of law under the Fourteenth Amendment, when the State can have the grand jury testimony of a defendant admitted into evidence, knowing the State examined the accused before the grand jury, the defendant waived his privilege of self-incrimination, with the defendant not in custody and no coercion by the Government, **but the defendant cannot introduce such grand jury testimony into evidence**[1]. Indeed, fundamental fairness requires that if the State can introduce the grand jury testimony of an accused, the defendant can introduce such grand jury testimony as well. Nothing could be more fundamentally fair, and this Honorable Court has held that the due process clause of the Fourteenth Amendment forbids fundamental unfairness in the use of evidence, whether true or false, in criminal prosecutions. ***Blackburn v. Alabama***, 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242 (1960).

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[1] TEX.R.EVID. 802 is identical to FED.R.EVID. 802

This apparently is a case of first impression. Because both FED.R.CRIM.PROC. 6(e)(3)(C)(i) and TEX.CODE CRIM.PROC.ANN. Art. 1.04 and 1.05 are vague and indefinite with regard to admission of grand jury testimony, the **rule of lenity requires that such ambiguity be resolved in favor of the accused.** ***United States v. Bifulco,*** 447 U.S. 381, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980); ***United States v. Sayklay,*** 542 F.2d 942 (5 Cir. 1976).

Finally, the failure of the trial court to admit Petitioner's grand jury's testimony is **not** harmless error, when examining its contents.

Consequently, the Petitioner's rights to due process under the Fourteenth Amendment, for refusal to receive into evidence the Petitioner's grand jury testimony, especially after being questioned at length by the prosecuting attorney, were violated. Therefore, this Petition for Writ of Certiorari should be granted, and a new trial ordered.

CONCLUSION

For the reasons stated, this Honorable Court should grant this Petition for Writ of Certiorari and summarily reverse the decision of the Texas Court of Appeals. That decision was patently erroneous and, furthermore, Petitioner should be granted a new trial.

Respectfully submitted,

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APPENDIX A

[SEAL]

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

KEITH ALAN LEHTO, Appellant, v. THE STATE OF TEXAS, Appellee.	§ § § § § § §	No. 08-98-00419-CR Appeal from the 385th District Court of Midland County, Texas (TC#CR23626)

OPINION

This is an appeal from jury convictions for two (2) counts of theft over $1,500 and under $20,000. The court assessed punishment at two (2) years' imprisonment in the State Jail Division of the Texas Department of Criminal Justice. We affirm the judgment of the trial court.

I. SUMMARY OF THE EVIDENCE

The evidence adduced at trial revealed that the complainant, Ronyld Wise, owned a company in Midland, Texas called PLS. This company listed oil and gas properties for sale. The company occasionally acted as an agent for the sale of oil and gas properties. Wise hired Appellant to work for his company starting the first week of January 1996. Appellant was hired to work on various projects for the company. It came to light that two checks

were drawn on the account of PLS and were made payable to Appellant. Check number 8987 was in the amount of $11,400 and check number 8980 was in the amount of $4,100. Wise testified that he did not give permission for these checks to be drawn on the account of PLS.

David Fowler worked for PLS. He testified that he was authorized to sign checks for PLS. He stated that he would sometimes sign a blank check in order that the employees could obtain postage for the postage meter. Fowler testified that Appellant would sometimes bring a blank check for him to sign for that purpose. The witness stated that his signature was on the check for $11,400. He testified that while the check was eventually made payable to Appellant. When Fowler signed the check, the payee line was blank. Fowler also related that his signature was on the check for $4,100. He stated that he would not have signed two checks in those amounts made payable to Appellant.

Dayna Beikirch stated that she was a mortgage loan broker for West Texas Mortgage in Midland, Texas. In January of 1996, she assisted Appellant in finding a mortgage to buy a home. Appellant showed her various documents to demonstrate that the money for the down payment and closing costs on the loan were not borrowed. He represented that the money from the down payment came out of his bonus account at PLS. The witness also testified that Appellant showed her two handwritten checks that he asserted were payroll checks. David Fowler testified that the checks were traced to check stubs that were marked "void." Ronyld Wise related that he did not write these checks nor did he give appellant permission to write them.

II. DISCUSSION

In Point of Error No. One, Appellant asserts that the court erred in imposing a state jail sentence of two (2) years to serve as the court had no discretion but to place Appellant on community supervision. At the punishment stage of trial, the State offered into evidence an order deferring imposition of a sentence from a district court in Montana. The order indicated that Appellant was convicted of two counts of forgery and imposition of the sentence was deferred on April 29, 1996.

At the time of trial, in accordance with then Article 42.12(15)(a) of the Texas Code of Criminal Procedure, the court had to probate a state jail offense unless it was proven that the defendant had been previously convicted of a felony.[1] TEX. CODE CRIM. PROC. ANN. art. 42.12(4)(e) (Vernon Supp. 2000). Appellant asserts that the Montana conviction is not a conviction for purposes of then Article 42.12(15)(a) because there is no evidence that Appellant was revoked and that the trial judge in Montana could strike his guilty verdicts from the record at a later date. However, we note that the Montana statute does not defer an imposition of guilt during the pendency of the probationary period.[2] TEX. CODE CRIM. PROC. ANN. art.

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[1] Act of June 7, 1995, 74th Leg., R.S., ch. 318 § 60, 1995 Tex. Gen. Laws 2754.

[2] The Montana statutes were introduced into evidence during trial. It provides that a person found guilty of certain offenses may have the sentence deferred. However, the statute that provides for dismissal of the charge after the completion of the probationary period provides that the court *may* allow the defendant to withdraw his guilty plea or the court may strike the guilty verdict.

42.12(15)(a) (Vernon Supp. 2000). Article 42.12 (4)(e) of the Texas Code of Criminal Procedure provides that an individual cannot be granted probation if he or she has been previously convicted of a felony. A conviction necessarily involves an adjudication of guilt. *See Perez v. State*, 938 S.W.2d 761, 763-64 (Tex.App. – Austin 1997, pet. ref'd). Accordingly, with regard to the record before us, as the Montana conviction implied an adjudication of guilt, it was demonstrated at trial that Appellant had a prior felony conviction. Point of Error No. One is overruled.

In Point of Error No. Two, Appellant maintains that the court erred in refusing to admit into evidence appellant's grand jury testimony. This testimony indicated that there was an agreement between Appellant and Wise for appellant to obtain a loan from PLS in order to buy a home. The State contends that this written testimony is hearsay offered for the truth of the matter asserted. We agree. We know of no exception to the hearsay rule that would allow the admission of such testimony. The testimony is not an admission and Appellant is not a party opponent. Therefore, TEX. R. EVID. 801(e)(2) does not apply. Point of Error No. Two is overruled.

In Point of Error No. Three, Appellant asserts that the court erred in refusing to admit into evidence appellant's pre-trial exhibits Nos. Two through Eight. At a pre-trial hearing, Appellant argued that various documents regarding Appellant's attempt to buy the business from Ronyld Wise should be admitted into evidence in that they were relevant to show that Wise knew the two checks in question were loans to Appellant. The court

ruled that the exhibits were not relevant in that they failed to show that Wise knew about the loan.

The standard for a trial court's determination regarding the admission or exclusion of evidence is an abuse of discretion standard *Moreno v. State*, 510 U.S. 966, 114 S.Ct. 445, 126 L.Ed.2d 378 (1993). We note that all the documents in question are dated long after the theft occurred and have no reference to any loans. The record indicates that the theft was not discovered at the time of the sale transactions. We find that the court did not err in refusing to admit the evidence. Point of Error No. Three is overruled.

In Point of Error No. Four, Appellant argues that the court committed reversible error by allowing Dayna Beikrich to testify at the guilt-innocence stage of trial. As stated, Dayna Beikrich testified that Appellant had indicated that the money for the down payment on the home loan was from his bonus account at PLS. He also presented two payroll checks to her. Testimony from other witnesses indicated that these checks were fake payroll checks. Appellant maintains that these matters constituted impermissible extraneous offenses.

Initially, for an extraneous offense to be admissible, it must be relevant to prove some material issue other than the accused's character. *Montgomery v. State*, 810 S.W.2d 372, 387 (Tex. Crim. App. 1991) (on motion for rehr'g). At trial, Appellant's defensive posture was that he had obtained the money in question from a loan from the company. Beikirch indicated that it was represented to her that the money was from a bonus account which would not have to be paid back. Clearly, this testimony

was relevant to cast doubt upon Appellant's defensive theory that the payments were loans.

With regard to the two payroll checks, same transaction evidence is admissible when the offense would make little or no sense without also bringing in the same transaction evidence. *Macias v. State*, 959 S.W.2d 332, 339 (Tex. App. – Houston [14th Dist.] 1997, no pet.). In the present case the State presented a scenario where Appellant was engaging in a continuing course of action in altering and manipulating the company's books in order to defraud PLS to obtain a home. As all these transactions were part and parcel of the same course of conduct, we find that the court did not err in admitting the evidence. Point of Error No. Four is overruled.

Having overruled each of Appellant's points of error, we affirm the judgment of the trial court.

February 29, 2000

/s/ Richard Barajas
RICHARD BARAJAS,
Chief Justice

Before Panel No. 4
Barajas, C.J., Larsen, and McClure, JJ.
(Do Not Publish)

APPENDIX B

**OFFICIAL NOTICE FROM COURT
OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711**

August 30, 2000
COA#: 08-98-00419-CR

RE: Case No. 0729-00

STYLE: LEHTO, KEITH ALAN

On this day the Appellant's Motion for Rehearing was denied.

(Received Sep. 5, 2000, EIGHTH COURT OF APPEALS)

DENISE PACHECO
CLERK 8TH COURT OF APPEALS
500 CITY COUNTY BLDG
EL PASO TX 79901-2408

**OFFICIAL NOTICE FROM COURT
OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711**

August 30, 2000

COA#: 08-98-00419-CR

RE: Case No. 0729-00

STYLE: LEHTO, KEITH ALAN

ORDER

THE APPELLANT'S PETITION FOR DISCRETIONARY REVIEW REFUSED.

(FINAL RULING)

(Filed Aug. 25, 2000, 8TH DISTRICT)

DENISE PACHECO
CLERK 8TH COURT
OF APPEALS
500 CITY COUNTY BLDG
EL PASO TX 79901-2408

APPENDIX C

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defense.

2. The Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. FED.R.CRIM.P.6(e)(3)(C)(i) provides:

> Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may

also be made – (i) when so directed by a court preliminarily to or in connection with a judicial proceeding;

4. TEX.CODE CRIM.PROC.ANN. Art. 20.04 provides:

> The attorney representing the State may examine the witnesses before the grand jury and shall advise as to the proper mode of interrogating them. No person other than the attorney representing the State or a grand juror may question a witness before the grand jury. No person may address the grand jury about a matter before the grand jury other than the attorney representing the State, a witness, or the accused or suspected person or the attorney for the accused or suspected person if approved by the State's attorney.

5. TEX.CODE CRIM.PROC.ANN. Art. 1.04 provides:

> No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

6. TEX.CODE CRIM.PROC.ANN. Art. 1.05 provides:

> In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process

for obtaining witnesses in his favor. No person shall be held to answer for a felony unless on indictment of a grand jury.

7. FED.R.EVID. 401 provides:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

8. TEX.R.EVID. 401 provides:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

9. TEX.R.EVID. 402 provides:

All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority. Evidence which is not relevant is inadmissible.

10. TEX.R.EVID. 801(e)(2)(A) provides, in pertinent part:

Statements Which Are Not Hearsay. A statement is not hearsay if: . . . (2) *Admission by party-opponent*. The statement is offered against a party and is: (A) the party's own statement in either an individual or representative capacity;

11. FED.R.EVID. 804(b)(3) provides, in pertinent part:

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is

> unavailable as a witness: . . . (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

12. FED.R.EVID. 801 (D)(2)(A) provides, in pertinent part:

> (d) Statements which are not hearsay. A statement is not hearsay if – (2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity.

APPENDIX D

[Original copy sent by facsimile and was very hard to read]

RONYLD W. WISE
P.O. Box 3295
Midland, Texas 79702-3295

September 5, 1996

Mr. Keith Lehto
511 W. Ohio, Suite 600
Midland, Texas 79701

Re: Extension of Contracts with respect to PLS Publications and related businesses

Dear Keith:

This letter will evidence the fact that on this date, you and I have agreed to extend the closing date and adjust the effective dates for the following described Contracts and Agreements:

1. Asset Purchase Agreement, Publishing Rights and business of PLS dated August 8, 1996, by and between Ronyld W. Wise and PLS Publications, Inc., and its single stockholder, Keith Lehto;

2. Asset Purchase Agreement, Convention and Exposition business dated August 8, 1996, by and among PLS, Inc., Seller, Ronyld W. Wise, Stockholder, and Keith Lehto, Buyer;

3. Consulting Agreement dated August 8, 1996, by and between PLS Publications, Inc. and Ronyld W. Wise;

4. Undated License Agreement and Option Agreement, executed on even date with the

above agreements, by and between PLS Petroleum Listing Services, Inc. and PLS Publications; and

5. All security agreements, letter agreements and other documentation executed by any of the above parties in connection with one or more of the above agreements.

The extension of the closing date shall be the date no later than close of business on September 30, 1996, subject to the additional condition that in addition to the collateral provided for in the above agreements, you will provide to Ronyld W. Wise, PLS, Inc., PLS Petroleum Listing Service, and PLS Publications, Inc. additional collateral in value of no less than $500,000, as reasonably determined by Ronyld W. Wise, et al., to secure all obligations of Keith Lehto and Partners under the above referenced agreements.

In connection with the foregoing, PLS, Inc. will spin-off its publishing and convention business as originally planned effective July 1, 1996 or as directed by PLS' accounting firm, Elms, Farris & Company. As consideration for this contract extension, you have transferred to Ronyld W. Wise all of the common capital stock of PLS Publications, Inc., which stock shall be transferred back to Keith Lehto if the above agreements are closed on or before September 30, 1996.

If said agreements are not closed by that date, the stock of PLS Publications, Inc. shall become the property of Ronyld W. Wise, free of any claim by Keith Lehto or any other party.

In addition to the transfer of stock, you have agreed to resign immediately as President of PLS Publications, Inc. and the parties agree that you will represent yourself as the Director and Manager of that business with the same leadership and management authority as previously allowed while employed with PLS, Inc. Keith Lehto's salary in the above capacity shall be $3,000 per month plus applicable bonuses. Further, as we discussed, we will immediately reinstate Ronyld W. Wise as lead signatory on all checking and savings accounts of PLS Publicationns.

PLS, Inc., Ronyld Wise and PLS Publications, Inc. and Keith Lehto also acknowledge that effective as early as July 1, 1996, the operations of the publications business of PLS, Inc. were assumed by PLS Publications, Inc. and by Keith Lehto, and the convention, Conference and Exposition Business in connection with the Deal-Makers Conference and Exposition in Houston, Texas was assumed by Keith Lehto. As a result, the parties recognize that an accounting will be necessary between the parties with respect to such operations, and the parties agree to immediately begin a cooperative effort toward a final accounting with respect to such operations. The parties agree that in the event that they are unable to agree upon any aspect of such accounting, revenue and expenses, they will submit to dispute resolution in the same manner as set out in Section 14.11 of the Asset Purchase Agreement, Publishing Rights and Business of PLS dated August 8, 1996, referred to above, resulting, if necessary, in binding arbitration upon each of the undersigned parties.

Based on the accounting, expenses and advised consequences of this transaction, Wise may elect to make the

transactions contemplated by the agreements and documents referred to on page 1, hereof, to be effective July 1, 1996, October 1 or November 1, 1996.

We also understand and agreed that PLS Publishing, Inc. and PLS, Inc. have entered into a joint venture with the Houston Chronicle the Midland Reporter Telegram, EBCO International and others, and that in connection therewith, PLS Publications, Inc. will honor all agreements which have been negotiated by Keith Lehto in connection with said joint venture, which agreements you have represented to be those set forth on Exhibit "A" attached to this letter. Any other agreements not listed on Exhibit "A" that subsequently arise will be held up to binding arbitration as set out above at Wise's option.

Each of the parties hereto agree that if the closing of the above agreements is not completed by closing of business on September 30, 1996, then the said agreements shall be automatically terminated, and each of the above parties agree to execute releases and to hold the other parties harmless with respect to any claims, liabilities or responsibilities of such other party or parties in connection with all of the above agreements or documents and failure to perform. Specifically, Lehto understands that Wise will be allowed to carry on each business or sell any businesses as he sees fit after October 1, 1996.

Each of the undersigned parties hereby acknowledge that this letter sets forth r entire agreement with respect to the matters addressed herein, and that the

same shall be binding upon each of the undersigned parties and our respective successors and assigns.

Respectfully yours,

/s/ Ronyld W. Wise
Ronyld W. Wise

ACCEPTED AND AGREED TO this 6 day of September, 1996.

PLS, INC.

By: /s/ Ronyld W. Wise

PLS PETROLEUM LISTING SERVICE

By: /s/ Ronyld W. Wise

/s/ Ronyld W. Wise
Ronyld W. Wise, Individually

PLS PUBLICATIONS, INC.

By: /s/ Keith Lehto

/s/ Keith Lehto
Keith Lehto, Individually

EXHIBIT "A"

To Letter Agreement dated September 5, 1996, Between Ronyld Wise, et al. And Keith Lehto, et al.

Publishing Agreement PLS Publications, Inc./Lehto – MRT/Hearst

Exposition Agreement PLS Publications, Inc./Lehto – MRT/Hearst

EBCO, International Expo Arrangement

Lehto/Wise House Deal - Employment

Houston Chronicle Expo Arrangement

Rocky Mountain News Purchase Agreement

Rocky Mountain News Release Agreement Lehto/PPI/ MRT/Hearst/RMN

Randy Wise - PLS, Publications, Inc./Lehto Settlement

David Fowler - PLS, Publications, Inc./Employee Advance

PLS Canada Purchase - Randy Wise Funds Used

Bill Kirsch - Computer Setup Agreement

MRT/Hearst/PLS, Inc. 2nd floor rental

MRT/Hearst/PLS, Inc. 2nd floor carpeting

MRT/Hearst/PLS, Inc. 2nd floor phones

Executive Oil Show/Midland - 2nd on 35% of MRT Profits to PPI/Lehto

Denver Oil Show PPI/Lehto 35% - MRT/Hearst 65%

Charlene Romero Wurtz Salary 50% PPI/Lehto - 50% MRT/Hearst

April 6, 2000

To: Keith Lehto

From: Roger H. Meurer; Document Examiner

On September 22, 1998 you delivered the following documents to me for examination.

Questioned:

Asset Purchase agreement Publishing Rights & Business of PLS.

Dated August 8, 1996. Containing signatures of Ron Wise & Keith Lehto.

I. #8 exhibit third party agreements containing initials of Ron Wise & Keith Lehto.

II. # 10 Allocation Exhibit containing the initial of Ron Wise.

III. PLS Purchase/Sale Consideration Schedule dated August 2, 1996 – containing initials Keith Lehto & Ron Wise.

IV. Amendment to asset Purchase Agreement Publishing Rights & Business of PLS.

Containing signatures of Keith Lehto & Ron Wise.

Known:

I. Settlement agreement and mutual release agreement page 6 of 7 – containing three signatures of Ron Wise.

II. Settlement agreement and mutual release agreement page 5 of 7. Containing signature of Keith Lehto and Ron Wise.

III. PLS Inc. Publishing Assets page 4 – Containing three signatures of Ron Wise & two signatures of Keith Lehto.

IV. Attorney agreement from Canon, Short & Gastan Attorneys – Containing signatures of Ron Wise & Keith Lehto.

Report:

I have made a careful examination of all of the standard writing submitted and I have formed the opinion that this writing contains a record of personal writing habit that would be useful in forming a judgement whether other writings were produced by the same person.

The examination was continued by comparison of the questioned writing with each item of the standard writing, and as a result of this comparison I have reached the following conclusion:

I. Ron Wise is the author of each Ron Wise signature contained in the questioned writing.

II. Keith Lehto is the author of each Keith Lehto signature contained in the questioned writing.

This finding is based upon the discover of agreement between the standard writing and the questioned writing in virtually all significant details of writing habit. There are only minor exceptions and they are judged to be well within the estimated range of variability of the standard writing.

/s/ Roger H. Meurer
Roger H. Meurer
Document Analyst

ASSET PURCHASE AGREEMENT
PUBLISHING RIGHTS & BUSINESS OF PLS

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made this 8 day of August, 1996, by and among PLS, Inc., a Texas corporation ("Seller"), Ronyld W. Wise, the majority stockholder of Seller ("Stockholder"), and PLS Publications, Inc., a Texas Corporation ("Buyer"), and its single stockholder Keith Lehto.

WHEREAS, Seller is presently engaged in the business of publishing and marketing certain newsletters and publications, including, without limitation, the Publications (as hereafter defined in Section 1.1B); and

WHEREAS, Seller is also engaged in the business of operating and managing a multiple listing service which maintains a data base of purchasers and sellers of oil and gas properties and oil and gas properties and interests for sale ("Listing Business")

WHEREAS, SELLER is also engaged in a marketing and advisory business ("Marketing Business") where the Seller acts as an agent for buyers and sellers;

AND WHEREAS, Seller desires to sell, assign and otherwise transfer to Buyer, and Buyer desires to purchase from Seller all Publishing Rights, (as herein defined) ("Publising Rights" are defined as the right of the Buyer to disseminate by hard-copy and/or electronic means, for profit the Seller's active data base of listings of properties, prospects, royalties, minerals and farm-outs for sale in the oil and gas industry,) all publishing rights to the multiple listing service and listing data base managed by the Seller; all current Publications of the Seller used in that business; and substantially all of the assets of

Seller related to or used in conjunction with the Publications.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and undertakings set forth herein, the parties hereto agree as follows:

1. **PURCHASE AND SALE.**

1.1 **Sale of the Publications & Publishing Rights**

A. **PURCHASED ASSETS:** Subject to the terms and conditions set forth in this Agreement, on the Closing Date of *August 8, 1996*, and effective *July 1, 1996*, Seller shall sell, assign, transfer and deliver to Buyer and Buyer shall purchase and accept the following (the "Purchased Assets"):

(i) all right, title and interest in and to the Publications and all of the assets related to and used in connection with the Publications including goodwill and intangible assets directly related there to.

(ii) all furniture, fixtures, supplies and equipment located at 511 West Ohio, #600, Midland Texas 79701 except those fixtures outlined in *Exhibit RET* and/or defined herein as "Retained Assets";

(iii) all assets and rights described in *Exhibit AST*.

B. **HARD-COPY PUBLICATIONS:** The term "Publications" shall mean the printed reports and newsletters currently known as *Acquisition News, Exploration News, Mineral & Royalty News, Property Review, Prospect Review* and *PLS NEWS*.

The term "Newsletter" shall mean any of the current PLS reports published by Seller at closing including six reports listed in the above paragraph B.

C. **ELECTRONIC SERVICE:** In addition, subject to certain performance clauses outlined here, the publishing rights also include all online and electronic rights of the Seller as they relate to the dissemination of the listings for sale to the industry and subscribers of PLS.

Specifically, Buyer agrees to initiate an electronic online service for clients of the Buyer and Seller for immediate access to the listing data base of the multiple listing service. Seller reserves the right to initiate a service on its own if Buyer fails to exercise good faith or incorporate best-efforts to initiate an online service by *December 31, 1996.*

D. **RETAINED ASSETS:** This sale shall *not* include assets (collectively, the "Retained Assets"), related to the Seller's listing, marketing and advisory businesses and are defined herein as:

(i) ownership of data files commonly known by the Seller as *MemberQA, Prospect3* and *List24* and currently owned by Seller, (Buyer will receive applicable data files and accounting information on Subscribers as defined as data base *Subscrib.* See 7.12); and

(ii) any tangible and intangible assets owned by the Seller and not related to or not used in connection with the Publications located at 511 West Ohio, #600, Midland Texas 79701; and/or

(iii) other assets listed on *Exhibit RET.*

2. **ASSUMPTION AND RETENTION OF CERTAIN OBLIGATIONS.**

2.1 **Assumption of Certain Obligations by Buyer**. Effective as of the Effective Date, July 1, 1996, Buyer shall assume and agrees to pay, perform, honor, discharge, or otherwise satisfy in due course the following debts, liabilities and obligations (hereinafter collectively the "Assumed Obligations") as defined on *Exhibit LIAB*:

Buyer is not assuming any liabilities or obligations of Seller, whether fixed or contingent, known or unknown, except as expressly provided in this Section.

2.2 **Retention of Obligations by Buyer**. Buyer agrees to pay accounts payables ("Assumed Obligations") listed on *Exhibit LIAB.PAY*, together with all payables related to the Publications after July 1, 1996.

2.3 **Retention of obligations by Seller**. Seller agrees to perform, honor, discharge or otherwise satisfy in due course, all of its debts, liabilities and obligations other than the "Assumed Obligations" related to the Publications and incurred before July 1, 1996.

3. **CONSIDERATION**. (*Exhibit 12* – Consideration, Allocation & Payment Dates)

3.1 **PURCHASE PRICE**. In consideration of the sale, transfer, assignment and delivery of the Purchased Assets by Seller to Buyer, Buyer shall pay to Seller a purchase price ("Purchase Price") of ($400,000) four hundred thousand dollars as follows:

a.) $200,000 at closing;

b.) $200,000 on November 1, 1996; and

c.) serial contingent payments outlined below in Section 3.2.

3.2 **SERIAL CONTINGENT PAYMENTS**. Buyer shall make additional serial contingent payments to Seller ("Additional Payments"), for the use of and rights to all trade names, trademarks and trade dress of the publications. Buyer shall make these additional payments on a monthly basis, in an amount equal to five percent (5.0%) of the monthly gross revenues (cash basis) received by Buyer each month for publishing revenues related to the Publications and/or any "Related Publications", ("Related Publications" as defined in Section 3.2a.), through June 30, 1999 and subsequently thereafter a reduced three percent (3.0%) payment, calculated the same as above, and paid for seven years (7), or through June 30, 2006. Each additional payment shall be accompanied by a revenue statement supporting each payment.

"Publishing Revenues" are herein defined as actual cash deposits for memberships, editorial subscriptions, access charges, listing fees and advertising dollars less any applicable state sales tax.

Under no circumstances will the aggregate monthly payments exceed five percent (5.0%) of the annual gross Publishing Revenues during the first three years or exceed three percent (3.0%) thereafter.

a.) **"RELATED PUBLICATIONS"** shall mean those publications that may be subsequently acquired or launched by Buyer which publications have as their primary subject matter the exploration; production, acquisitions, divestitures of oil and gas properties or interests

and/or publications which would carry PLS listings in the reports.

b.) **CURRENT PUBLICATIONS:** The parties agree that none of the newsletters, publications or information services owned by Buyer immediately prior to Closing including, but not limited to, the *Midland Oil Report* shall be deemed to be Related Publications unless said reports are redesigned to carry PLS listings and/or are merged with any current PLS report such as *Exploration* News.

c.) **PAYMENT:** Payment of the Serial Contingent Payments for each month would be due to the Seller on the 15th of the following month.

d.) **BUYER RIGHTS:** Buyer may discontinue any of the Newsletters ("Newsletters" as defined in 1.1B) or Related Publications or consolidate any of the Newsletters or Related Publications into other publications if Buyer determines in good faith that any of the Publications, Newsletters or Related Publications will not result in sufficient profitability for Buyer.

e.) **SELLER RIGHTS:** Seller and its representatives shall have the right, upon reasonable notice, twice per year, to inspect those books and records of the Buyer which are reasonably necessary to verify the calculation of the Serial Contingent Payments provided that such inspection and audit may only be conducted during the normal business hours and at the premises of the Buyer.

f.) **AUDIT PROCEDURE:** In the event that Seller shall dispute Buyer's calculation of the amount of the Serial Contingent Payments

then Seller and Buyer shall jointly retain a mutually acceptable accounting firm to determine the correct amount of eligible publishing revenues. If Buyer and Seller cannot, within fifteen (15) days following notification from Seller of the dispute, mutually agree upon the accounting firm to be retained, Buyer and Seller shall each promptly select one accounting firm and the two accounting firms shall then jointly select a third accounting firm to resolve the dispute. The parties agree that the determination of the accounting firm shall be binding on them and shall not be subject to judicial review.

g.) **AUDIT COSTS:** Buyer and Seller shall each pay the costs and expenses of their respective accountants and other representations. In the event that Seller disputes any calculation by Buyer of the Serial Contingent Payments due to Seller for any particular year, the costs and expenses of the accounting firm selected to resolve the dispute shall be paid by Seller if the amount determined by such accounting firm is within five percent (5%) of the amount calculated by Buyer. If the amount determined by the accounting firm differs more than five percent (5%) from the annual amount calculated by Buyer, then Buyer will pay all of the costs and expenses of such accounting firm.

3.3 **Security Agreement**. To secure all of Buyer's obligations hereunder whether the obligation to pay money or otherwise, Buyer shall execute and deliver to Seller a Security Agreement on form attached hereto together with such Financing Statements as are necessary to perfect the security interest created therein.

3.4 **Allocation of Purchase Price.** The Purchase Price shall be allocated according to Exhibit IX, ***EXHIBIT ALLOCATE***.

The parties agree to cooperate in the allocation of the purchase price and the preparation of *IRS Form 8594*. The parties hereto further agree that such allocation is based upon the respective fair market values of the Purchased Assets.

4. CLOSING: CONDITIONS TO CLOSING.

4.1 **The Closing.** The closing of the transactions contemplated hereby (the "Closing") shall take place on *August 8, 1996* at the offices of PLS Inc., at 511 West Ohio, Suite #600 Midland Texas 79701.

The Closing shall be effective as of the start of business on *July 1, 1996* which shall be deemed to be the Closing Date for all purposes under this Agreement. By closing hereunder, Seller shall be deemed to have made again all representations and warranties contained herein as of the Closing Date.

4.2 **Conditions to Each Party's Obligations to Close.** The obligations of Buyer and Seller to close the transactions provided for herein are subject to the satisfaction on or prior to the Closing Date of the following conditions;

A. **No Injunction.** Neither Seller nor Buyer shall be subject to any order, decree or injunction of a court of competent jurisdiction which prevents or challenges any of the transactions contemplated by this Agreement.

B. **Governmental Action.** There shall not have been any action by any court or governmental agency rendering the transactions contemplated hereby illegal.

4.3 **Conditions to Buyer's Obligation to Close**. The obligation of Buyer to close the transactions provided for herein is subject to the satisfaction on or prior to the Closing Date of the following additional conditions:

A. **Compliance with Covenants and Agreements**. Each of the covenants and agreements of Seller to be performed on or before the Closing Date pursuant to the terms hereof shall have been duly performed and complied with in all material respects and Buyer shall have received a certificate from Seller to such effect.

B. **Representatives and Warranties of Seller**. All representations and warranties of Seller contained in this Agreement, or any Schedule or Exhibit hereto, shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties had been made on and as of the Closing Date, and Buyer shall have received a certificate from Seller and Stockholder to such effect.

C. **All Proceedings to Be Satisfactory**. All proceedings to be taken by the Seller in connection with the transactions contemplated hereby and all documents incident hereto shall be reasonably satisfactory in form and substance to Buyer and its counsel.

D. **Certificate of Good Standing**. Buyer shall have received from Seller a certificate of good standing

from the appropriate official of its state of incorporation within thirty (30) days of Closing Date.

4.4 **Condition to Seller's Obligation to Close**. The obligation of Seller to close the transactions provided for herein is subject to the satisfaction on or prior to the Closing Date of the following additional conditions:

A. **Compliance with Covenants and Agreements**. Each of the covenants and agreements of Buyer to be performed on or before the Closing Date pursuant to the terms hereof shall have been duly performed and complied with in all material respects and Seller shall have received a certificate from Buyer to such effect.

B. **Representations and Warranties of Buyer**. All representations and warranties of Buyer contained in this Agreement, or any Schedule or Exhibit hereto, shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties had been made on and as of the Closing Date and Seller shall have received a certificate from Buyer to such effect.

C. **All Proceedings to Be Satisfactory**. All proceedings to be taken by the Buyer in connection with the transactions contemplated hereby and all documents incident hereto shall be reasonably satisfactory in form and substance to Seller and its counsel.

5. **COVENANTS**.

5.1 **Seller's Deliveries**. At the Closing, Seller, as applicable, shall deliver to Buyer the following documents, certificates and instruments, in each case in form and substance reasonably satisfactory to Buyer:

A. **Bill of Sale**. Duly executed by Seller, substantially in the form of ***Exhibit "Bill of Sale"*** hereto;

B. **Title**. Such other good and sufficient instruments of conveyance, assignment and transfer, in form and substance reasonably satisfactory to Buyer and its counsel, as shall be effective to vest in Buyer good, valid and marketable title to the Purchased Assets and to carry out the purposes of the Agreement;

C. **Possession**. All tangible assets which are part of the Publications and other Purchased Assets, including, without limitation, the Subscriber Files and the list of Active Subscribers described herein, it being understood by Buyer, and agreed by Seller, that all of such tangible assets, except for the A-B Dick printing press are located at the premises of Seller at *511 West Ohio Ave., Suite #600, Midland, Texas*, and it being agreed by Buyer that the delivery of the foregoing shall be accepted at such location;

D. **Consulting & Non-Compete Agreements.** The Consulting Agreement in the form attached hereto as ***"EXHIBIT CONSULTING"*** ("Consulting Agreement") duly executed by Stockholder.

E. **Security Agreement**. A Security Agreement duly executed by Buyer on form attached hereto as Exhibit *"Security Agreement"* given by Buyer to secure all of Buyer's obligations hereunder.

5.2 **Buyer's Deliveries**. At Closing, Buyer, shall deliver to seller the following documents, certificates and

instruments, in each case in form and substance reasonably satisfactory to Seller:

A. **Cash**. The Purchase Price required to be delivered at Closing in accordance with Section 3 hereof:

B. **Consulting Agreement**. Duly executed by Buyer;

C. **Additional Payments**. The payment required of Buyer under the Consulting Agreement.

E. **Third-Party Agreement**. License, option and non-compete agreement with PLS Petroleum Listing Service Inc., for use of the name "PLS" and other rights described therein duly executed by the Buyer and attached as ***EXHIBIT 3RD-PARTY***;

F. **Joint Marketing Agreement**. Marketing and license agreement between Buyer and Seller and duly executed, (Attached as ***"EXHIBIT STRATEGIC ALLIANCE"***) providing for both companies the right to cross-sell and cross-market each other's product lines for an agreed upon revenue split; and,

5.3 **Conduct of the Operations of the Business**. From the date hereof to the Closing Date, except as expressly contemplated by this Agreement or to the extent that Buyer shall otherwise consent in writing, Seller shall conduct the operations of the Publications as presently operated and only in the ordinary course, and Seller shall use reasonable efforts, consistent with such operation, to preserve intact its relationships with persons having business dealings with the Publications.

Seller shall use reasonable efforts to preserve and maintain the Purchased Assets in good operating condition, order and repair. Seller shall maintain Seller's policies of fire and casualty insurance, publisher's and other liability insurance and other form of insurance applicable to the Purchased Assets, in full force and effect from the date hereof through the Closing Date.

5.4 **Consents and Notices**. Seller shall use reasonable efforts to obtain all consents, waivers, amendments, modifications, approvals, authorizations, permits and licenses which may be necessary to effectuate this Agreement and to consummate the transactions contemplated hereby in accordance with the terms hereof, and shall give all notices to third parties required to be given by it in contemplation and as a result of the transactions contemplated by this Agreement.

5.5 **Efforts to Satisfy Conditions**.

A. Seller shall use reasonable efforts to cause the conditions to the obligations of Buyer contained in *Sections 4.2 and 4.3* to be satisfied, to the extent that the satisfaction of such conditions is within the control of Seller.

B. Buyer shall use reasonable efforts to cause the conditions to the obligations of Seller contained in *Sections 4.2 and 4.4* to be satisfied, to the extent that the satisfaction of such conditions is within the control of Buyer.

5.6 **Buyer's Audit and Examination**. Buyer, acknowledges that he and/or authorized representatives, have conducted examination of the assets, business and

financial condition of Seller as Buyer reasonably deem necessary to verify that the assets, business and financial condition of the Publications and believes them consistent with the representations and warranties of Seller and the Stockholder herein.

Buyer has had full access to the premises and to all the books and records of Seller and to such personnel as Buyer reasonably deems necessary or desirable, and Seller has furnished to Buyer such financial and operating data and other information with respect to the newsletters.

5.7 **Confidential Information.**

A. At all times after the Closing – Buyer, Seller and Stockholder agree to (i) keep secret and retain' in the strictest confidence all confidential matters with respect to the Publications including, without limitation, information contained on subscriber lists and promotion lists, know how, trade secrets, pricing policies, operations methods, marketing plans or strategies, business methods, ideas, processes, systems, procedures, data and data bases, and all other information concerning the Publications, and (ii) not disclose or use any of such confidential information.

B. Upon a breach or threatened breach by Buyer, Seller or Stockholder of confidentiality agreement described in Section 5.7A, any nonbreaching party will be entitled to recover monetary damages and, in addition, shall be entitled to obtain injunctions, and/or restraining orders to restrain and prevent any such breach or threatened breach. In addition, the party breaching or threatening breach shall be liable for all costs and expenses,

including attorneys' fees, incurred by the non-breaching party in enforcing Section 5.7A.

5.8 **Non-Competition Covenants.**

A. **Seller Obligation.** Seller and Stockholder covenant and agree that for a period of five (5) years beginning on the Closing Date they will not, (except for PLS Canada's sole report *The Canadian Acquirer*), directly or indirectly, in any capacity whatsoever, engage in the business of publishing newsletters, reports, publications or news services which contain any subject matter which is the same as or similar to, in whole or in part, the subject matter of any of the Publications, in any manner whatsoever within the United States, Canada or internationally or have any direct or indirect interest in any entity or person that engages in such business without the permission of the Buyer.

Seller agrees to work with Buyer on expansion of the PLS publishing business in Canada after resolution of the PLS Canada situation.

In addition, during such period, Seller and Stockholder agree jointly and severally not to, directly or indirectly, (i) solicit any of the Buyer's subscribers for or with respect to the business which Seller and Stockholder are prevented from engaging in pursuant to the preceding sentence, or (ii) solicit for employment or employ any employees of Buyer without the permission of the Buyer.

Notwithstanding the foregoing, the parties hereto agree that the operation of Seller's marketing and advisory business and/or Seller's related interest in *The Canadian Acquirer* will not be considered a breach or violation of the Agreement.

B. **Buyer Obligation**. Buyer agrees that for a period of five (5) years beginning on the Closing Date it will not, directly or indirectly, in any capacity whatsoever, engage in the business of managing a listing service or directly and formally market oil and gas interests as a professional agent for property sellers in any manner whatsoever within the United States, Canada or international arena, or have any direct or indirect interest in any entity or person that engages in such business without the permission of the Seller.

In addition, during such period, Buyer agrees that neither Buyer nor any entity in which Buyer owns either a direct or indirect financial interest will directly or indirectly solicit for employment or employ any employees of Seller without the permission of the Seller.

C. **Reasonableness**. Buyer, Seller and Stockholder acknowledge that the restrictions set forth in Sections 5.8A are fair and reasonable and are reasonably required for the protection of each of their interests.

In the event that, notwithstanding the foregoing, any of the provisions of Section 5.8A are held to be invalid or unenforceable, the remaining provisions thereof shall nevertheless continue to be valid and enforceable.

In the event that the time period and/or areas of restriction set forth in Section 5.8A shall be declared by a

court of competent jurisdiction to exceed the maximum restrictiveness such court deems reasonable and enforceable, the time period and/or areas of restriction deemed reasonable and enforceable by the court shall become and thereafter be the maximum restrictions contained in Section 5.8A in such regard, and the restriction shall remain enforceable to the fullest extent deemed reasonable by such court.

D. **Relief**. In the event of a breach ox threatened breach by any party of Section 5.8A, any non-breaching party shall have the right to obtain monetary damages for any such breach or threatened breach and equitable relief, including, but not limited to injunctions and/or restraining orders. Further, the party threatening breach of or breaching Section 5.8A shall be liable for All costs incurred by any non-breaching party, including attorneys' fees, in enforcing the provisions of this Section 5.8.

6. AGREEMENT TO COOPERATE

6.1. **Ownership and Management of Listing Business**. Buyer and Seller acknowledge that the Seller owns and has, to date, managed a business in which the seller obtains listings (the "Listings" as defined in Section 6.2) from persons and entities for the sale of oil and gas properties (the "Listing Business"), the assets of which are the data base file *List24*.

Buyer and Seller agree that following Closing, Seller will retain ownership of the Listing Business, but that the Buyer shall have the right to manage the Listing Business, for the benefit of Buyer and Seller, subject to the following limitations and conditions.

a.) Buyer shall continue to manage the Listing Business in a manner substantially the same as that in which Seller has managed such business to date including maintaining the confidentiality of the data base and process;

b.) Buyer shall, so long as Buyer manages the Business, manage the Listing Business without charge to the Seller, provided that Buyer shall have the right to use and publish the information contained in the Listings in Buyer's publications, provided that all published listings shall be coded in accordance with procedures mutually agreed upon by Buyer and Seller designed to maintain the confidentiality of the information contained within the listings. Buyer shall have the right to receive all fees charged for publishing any such listings in Buyer's publications along with all access charges applicable to clients of the Buyer and Seller who request additional information about Listings from the Buyer.

c.) Seller shall have the right at any time to take over management of the Listing Business, and should Seller elect to do so, Buyer shall have the right to access and to publish the Listings in Buyer's publications for a management and service fee of $5,000 per month. Should Seller assume management of the Listing Business, the coding restrictions set forth in the preceding paragraph shall continue to apply to both Buyer and Seller and Buyer shall continue to have the right to all fees charged for publishing any such listings in Buyer's publications. However, under this scenario, Seller would be entitled to the access charges accrued by clients

requesting additional information from the Manager 'of the Listing Business.

d.) **Selection Criteria**. Seller, through its ownership of the Listings will have complete authority over the selection of Listings which will appear in Buyer's newsletters, publications, special reports and promotional pieces.

e.) **Frequency**. Buyer will have complete authority to the frequency of its publications, newsletters and special reports which carry the Listings of the Listing Business.

f.) **Data Transfer**. Listing Manager will download all new listings to the Buyer once per week, or as required by Buyer, for various Publications, (including new publications) of such Listings. The downloading will be made by such electronic transfer to Buyer's computer system as may be requested by Buyer. Seller recognizes Buyer may require Listings on a periodic basis for promotional reports and marketing efforts.

g. **Quality Control**. The parties covenant and agree that the Listing Manager (either the Buyer or the Seller, acting in that capacity, as applicable) will continue to operate the Listing Business for the entire term of the Agreement in a similar manner as the Seller has previously conducted such business.

6.2. **Listings**. The term "Listings" used herein is defined as an advertising description of oil and gas producing properties, prospects, farm-outs, royalties, minerals and refineries which are for sale and formally listed with Seller. Buyer may uncover Listings on its own which are obligated to be referred to the Seller and the Listing Manager for addition to the data base.

6.3. **Non-Compete Clauses**. Buyer and Seller agree under this agreement:

(i) Seller may not operate and promote another Listing service;

(ii) Seller may not grant or permit any person, business or entity other than the Buyer to publish any of the Listings of the Listing Business at any frequency without the permission of the Buyer.

(iii) Buyer agrees that it will not, in any capacity operate, manage or publish a central listing service or confidential data base of "Listings for sale" that are in competition with Seller. Notwithstanding the foregoing Buyer may gather its own data on Listings and publish such data in its newsletter and other publications but agrees to cooperate with the Seller in getting those listings formally in the Seller's Listing Business.

(iv) Notwithstanding the foregoing, the parties hereto agree that the operation of Seller's marketing and advisory business and/or Seller's related interest in *The Canadian Acquirer* will not be considered a breach or violation of the Agreement.

6.4. **Fairness of the Non-Compete**. Buyer and Seller acknowledge that the non-compete restrictions and Listing Manager requirements and conditions set forth herein are fair and reasonable and are reasonably required for the protection of the interests of Buyer and Seller as the case may be. In the event that, notwithstanding the foregoing, any of the provisions of Section 6 are

held to be invalid or unenforceable, the remaining provisions thereof shall nevertheless continue to be valid and enforceable.

6.5 **Strategic Alliance**. Buyer and Seller agree to work together to promote each other's product line; cross-sell services for the other and refer market leads and information to the other on a best effort basis according to the *Strategic Alliance* attached hereto.

6.6 **Ongoing Obligation**. Buyer and Seller agree to cooperate and exercise good faith in negotiating and managing the ongoing obligations of the Listing Business and to adjust applicable fees, service charge arrangements as the businesses, (editorial/publishing, listing and marketing/consulting) develop.

7. **REPRESENTATIONS AND WARRANTIES OF SELLER AND STOCKHOLDER**. Seller and Stockholder represents and warrants to Buyer as follows:

7.1 **Organization, Standing and Qualification**. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and is qualified to do business as a foreign corporation in each jurisdiction where the failure to be so qualified would have a material adverse effect on the Seller. Seller has all requisite corporate power and authority to carry on its business as now being conducted.

7.2 **Authorization**. Seller has full corporate power and authority to execute and deliver this Agreement and the other agreements and instruments to be executed and delivered by it pursuant hereto and to consummate the

transactions contemplated hereby and thereby. All corporate acts and other proceedings required to be taken by or on the part of the Seller to authorize Seller to execute, deliver and carry out this Agreement and such other agreements and instruments and the transactions contemplated hereby and thereby have been duly and properly taken, including, without limitation, effective authorization by Seller's stockholders and board.

This Agreement has been duly executed and delivered by Seller and the Stockholder and together with other agreements and instruments contemplated herein, when duly executed and delivered, shall constitute legal, valid and binding obligations of Seller and the stockholder enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganization, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally from time to time in effect, and subject to equitable principles.

The execution and delivery by Seller and Stockholder of this Agreement and such other agreements and instruments and the consummation of the transactions contemplated hereby and thereby will not violate any law or conflict with, or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in the creation of an Encumbrance (as hereafter defined) on any of the properties or assets of Seller pursuant to, its certification of incorporation or by-laws or under any indenture, mortgage, lease, agreement or other instrument or any order, arbitration award, judgment or decree to which Seller is a party or by which Seller of its properties or assets may by be bound or affected. No approval,

authorization, consent or other order or action of or filing with any court, administrative agency or other governmental authority is required for the execution and delivery by Seller of this Agreement or such other agreements and instruments or the consummation of the transactions contemplated hereby or thereby.

7.3 **No Undisclosed Liabilities**. The Seller does not have any material liabilities or obligations of any nature whatsoever, whether absolute, accrued, contingent or otherwise, except for obligations and liabilities incurred in the ordinary course of business.

7.4 **Title to Properties**. Seller has good, valid and marketable title to the Publications and other Purchased Assets free and clear of all "Encumbrances", which term shall be defined to mean all security interests, liens, charges and other claims or encumbrances of any kind or nature whatsoever except for liens for taxes, assessments and charges not yet due and delinquent. The Purchased Assets constitute all of the assets and properties necessary for the printing and operation of the Publications.

7.5 **Taxes and Tax Return**.

A. Stockholder and Seller believe all returns, including, without limitation, estimated returns, required to be filed by Seller in connection with the operation of its business prior to the date hereof with respect to any federal, state, local and other income, franchise, property, sales, use, excise, payroll or other governmental taxes or charges and other information returns and reports required to be filed with any governmental authority, where the failure to file the same and/or pay the amounts

due there under (including, without limitation, all interests, penalties and additional tax) has or could have a material adverse effect on the Purchased Assets and/or Buyer's use of the Purchased Assets, have been duly and timely filed and any and all amounts due thereunder prior to the date hereof (including, without limitation, all interests, penalties and additional tax), whether or not disputed, have been paid by Seller. Seller believes all such returns and information set forth thereon are correct in all material respects.

B. No federal, state, local or foreign income tax return or report of Seller is in the process of or has ever been examined by an appropriate taxing authority, and Seller has not executed any waiver of any applicable statute of limitations with respect to any such tax return or report. Seller believes there are no outstanding agreements or waivers extending the statutory period of limitations applicable to any federal, state, local or foreign tax return of Seller.

7.6 **Intellectual Property Rights.**

A. Seller owns the entire right, title and interest in and to the Intellectual Property Rights (defined as all copyrights, trademarks, goodwill and publishing business opportunities of the Seller) which are free and clear of any Encumbrances. Seller pays no royalty with respect to any of the Intellectual Property Rights or Publications.

B. Seller, except for PLS Canada, has not licensed or granted to any other person or granted any rights to any person or entity, with respect to any of the Intellectual Property Rights which are not for one-time use or which are of a continuing nature.

C. Seller believes he has not, and is not, infringing upon or otherwise acting in derogation of or in conflict with any rights of others with respect to any of the Intellectual Property Rights or otherwise in connection with the Publications or the other Purchased Assets, and Seller has not received any notice of any such claim of infringement or any such act in derogation of or in conflict with the rights of others.

D. Seller believes there are no third parties infringing any Intellectual Property Rights.

E. To the best of Seller's knowledge, Seller believes none of the Publications contain any defamatory, libelous or injurious material and no such work or material violates any rights of privacy or publicity, copyright, trademark, trade name or any other right of any person.

7.7 **Copyrights and Trademarks**. To the Seller's knowledge and belief, the Publications contain appropriate copyright and trademark notices.

7.8 **Contracts**

A. **Transferred Contracts/Obligations**. All contracts listed on *Schedule "Contracts"* are in full force and effect, legally valid and binding in accordance with their terms (except as may be limited by bankruptcy, moratorium, reorganization, insolvency and other similar laws of general application relating to or affecting the rights of creditors, and by general principles of equity), and there are no existing material defaults or breaches thereof on the part of Seller, and Seller has no knowledge of any material default or breach on the part of any other party thereto; and Seller has not received any notice,

claim or allegation of any default or breach and there has not occurred any event which with notice or lapse of time or both would constitute a default or breach thereunder.

B. **Assignability**. The contracts listed on *Schedule "Contracts"* are validly assignable by Seller to Buyer, and such contracts will be validly and effectively assigned to Buyer so that Buyer will be entitled to the full benefits thereof.

C. **Schedules Contracts**. set forth collectively a correct and complete list of "all contracts, oral and written, of Seller relating to the Publications and the Listing Business. True and complete copies of all contracts listed on the Schedule have been made available to the Buyer.

7.9 **Personal Property**. *Exhibit AST* hereto collectively list substantially the equipment, inventory and other tangible personal property owned by Seller which is being used in connection with the Publications and being transferred to the Buyer.

Seller believes each item and other tangible personal property set forth on *Exhibit AST* is in good operating condition and repair and is adequate and suitable for the purposes for which it is presently being used.

7.10 **Adverse Changes or Events**. To the best of Seller's knowledge, Seller has since January 1, 1996 conducted its business with respect to the Publications only in the ordinary course, without policy change, and Seller has not:

A. sold or offered to sell any copies of issues or editions of any of the Publications under any terms

(including, without limitation, those with respect to payment or cancellations), other than those offered in a normal and customary manner consistent with its prior practice;

B. received any notice of termination of any material contract or suffered any damage, destruction or loss (whether or not covered by insurance) which, in any case or in the aggregate, has had a material adverse effect on the assets or operations of the Publications;

C. incurred any obligation or liability (absolute or contingent), except for liabilities incurred and obligations under contracts entered into in the ordinary course of business;

D. except in the ordinary course of business, increased the compensation payable to any of its employees involved in the operation of the Publications;

E. incurred any indebtedness to any third parties for borrowed money except pursuant to existing lines of credit and loan agreements;

F. except in the ordinary course of business, entered into any lease (as lessor or lessee), sold, abandoned or made any other disposition of any of its material assets or properties; granted or suffered any lien or other Encumbrance on any of its material assets or properties; or entered into or amended any material contract or other agreement to which it is a party, or by or to which it or its assets or property are bound or subject;

G. suffered or incurred any damage, delay or cessation of business, breach of material contract, destruction or loss (whether or not covered by insurance)

which materially and adversely affected the assets, properties, business, operations or financial condition of any of the Publications;

H. had terminated or failed to renew any contract or other agreement that is or was material to the assets, properties, business, operations or financial condition of the Publications;

I. suffered any change, event or condition which, in any case or in the aggregate, has had or might reasonably be expected to have a material adverse effect on the conditions (financial or otherwise) of the Publications, or the other Purchased Assets, or the assets, liabilities, business, operations, condition or prospects thereof including, without limitation, any material adverse change in the renewal rates of subscribers to any of the Publications, or any material adverse change in relations with those with whom Seller conducts business with respect to the Publications;

J. entered into any material transaction, contract or commitment with respect to the Publications other than in the ordinary course of business (other than this Agreement) or other than in a normal and customary manner consistent with its prior practices;

K. received from any subscriber, customer or supplier of Seller, the loss of which would materially and adversely affect any of the Publications, notice of any intention to discontinue its regular dealings with the Seller; or

L. entered into any agreement or made any commitment to take any of the types of action described in subparagraphs (A) through (K) above.

7.11 **Inventory**. Seller represents that substantially all of the inventory of Seller, relating to the Publications, and other Purchased Assets, including, without limitation, all finished goods inventory, sheet stock, and other work in process, and all back issues of the Publications are located at 511 West Ohio, Suite #600, Midland.

7.12 **Subscribers**. Seller represents to the best of his knowledge that the data file of subscribers, known as "Subscrib" and revenue files of *REV1995* and *REV1996* constitute (i) the number of Active Subscribers and their payment to Seller for previous services; (ii) the number of expired or otherwise inactive subscribers; (iii) the status of each subscriber, the month of renewal and the specific publications requested by each member; (iv) the gross cash receipts and the average monthly renewal rate from November 1, 1994 through June 30, 1996.

7.13 **Confidentiality of the Data Base**. Except for rentals for one-time use to third parties in the ordinary course of business, Seller represents that to the best of its ability, it keeps, and has kept, the subscription lists and data base for the Publications and all promotion lists confidential and has made no disclosure of such lists except to its employees and representatives as reasonably required for the operation of Seller's business.

Seller has used reasonably necessary precautions to safeguard the confidential nature of said lists and except for the Marketing Business and Listing Business has not

licensed or otherwise transferred any rights to any of such lists to any other party.

Except in regard to the records, lists and ongoing requirements of the Listing Business and Marketing Business, neither Seller nor Stockholder shall retain or have at anytime after the Closing any separate copy of any subscription lists or records of any of the Publications.

Neither Seller nor any of Seller's officers, directors, employees, stockholders or agents will use or disclose any information on said lists before or after the Closing without the prior written consent of Buyer except in the ordinary course of Business prior to the Closing in connection with the operation of Seller's operation of the Publications.

7.14 **Compliance with Laws.** Seller has complied, in his knowledge, in all material respects with any and all federal, state or local laws, rules, regulations, orders or decrees applicable to Seller, the Publications, or the other Purchased Assets.

Seller has not received notice of any violation of any federal, state, local or foreign law, rule, regulations, orders or decrees relating to Seller, the Publications, or the Purchased Assets, which violation would have a material adverse effect on the condition (financial or otherwise), assets, liabilities, properties, business or results of operations of the Publications; and Seller has received no notification of any threatened claim of such violation (including any investigations) regarding the business of Seller or the Purchased Assets.

7.15 **Litigation**. Seller represents that, (to the best of his knowledge), except for PLS Petroleum Listing Service and PLS Inc., Canadian claims against MountBeliard Marketing Corporation, EnerVentures Inc., Bill Bernard et. al. there are no claims, actions, suits, proceedings, arbitrations or investigations pending or, threatened against Seller or Stockholder, and there is no valid basis therefor.

Seller is unaware of any order, judgment, injunction, decree or award (whether rendered by a court, a governmental body or by arbitration) pending against the Seller which remains unsatisfied, requires continuing compliance or materially adversely affects the business, financial condition, assets, liabilities, results of operations or income of the Publications.

Seller shall retain all responsibility (and awards, rulings, judgements, and benefits) for and satisfy all obligations in connection with the Canadian litigation currently being pursued.

7.16 **Account Receivable**. The accounts receivables of Seller, applicable herein, including receipts for new membership sales, renewals, listing fees, access charges and advertising billed on or after November 1, 1995 and through June 30, 1996 was approximately $_____.

All of such accounts receivable are valid receivables subject to no known set-offs of counterclaims, are current and collectable, are recorded correctly on the books and records of the Seller, and may be collected in accordance with their terms at their recorded amounts.

7.17 **Deferred Subscription Liability**. Seller will not from and after the Closing have any liability for the

fulfillment of any prepaid advertising, subscriptions or membership dues.

7.18 **Employment Matters**.

A. **Full & Part-Time Employees**. Seller is not a party to or bound by any employment agreement (other than oral agreements terminable at will) or collective bargaining or labor agreement with any of the employees being transferred with the Publication business. Seller believes itself to be compliance with all laws respecting employment and employment practices, terms and conditions of employment and wages and hours. To the knowledge of Seller, Seller is not and has not engaged in any unfair labor practice and no unfair labor practice complaint is pending or threatened. Seller is unaware of any material labor difficulty with any of its employees during the last three (3) years.

B. **Outside Contractors**. Seller has reasonably good working relationships with its editors, consultants, printers and other persons having business dealings with Seller and, to Seller's knowledge, there has been no material adverse change in those relationships within the preceding twelve (12) months.

7.19 **Full Disclosure**. All documents, instruments, Exhibits, Schedules and other materials delivered to Buyer by Seller are or will be correct and complete. Copies of all documents and instruments set forth on all Schedules and Exhibits hereto have been or will be delivered by Seller to Buyer prior to the Closing. No representation or warranty by Seller contained in this Agreement and no statement contained in any Exhibit, Schedule, certificate or other instrument furnished or required to be

furnished to Buyer contains any untrue statement of any fact, or omits or shall omit to state any fact, necessary in order to make the statements and information contained herein or therein not materially misleading. Seller is not aware of any fact or circumstance which may reasonably have a material adverse effect on the business, assets, liabilities, operations, prospects or financial condition of Seller, the Newsletters, or the other Purchased Assets.

8. **REPRESENTATIONS AND WARRANTIES OF BUYER**. Buyer represents and warrants to Seller as follows:

8.1 **Organization, Standing and Power**. Buyer is a Corporation duly organized, validly existing and in good standing under the laws of the State of Texas and is qualified to do business in each jurisdiction where the failure to so qualify would have a material adverse effect on Buyer. Buyer has all requisite corporate power and authority and is entitled to carry on its business as now being conducted.

8.2 **Authorization**. Buyer has full corporate power and authority to execute and deliver this Agreement and the other agreements and instruments to be executed and delivered by Buyer pursuant hereto and to consummate the transactions contemplated hereby and thereby. All corporate acts and other proceedings required to be taken by or on the part of Buyer to execute, deliver and carry out this Agreement and such other agreements and instruments and the transactions contemplated hereby and thereby have been duly and properly taken, including, without limitation, effective authorization by Buyer's

board of directors. This Agreement has been duly executed and delivered by Buyer and constitutes, and such other agreements and instruments, when duly executed and delivered by Buyer, shall constitute the legal, valid and binding obligations of Buyer enforceable in accordance with their respective terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally from time to time in effect, and subject to principles of equity). The execution and delivery by Buyer of this Agreement and such other agreements and instruments and the consununation of the transactions contemplated hereby and thereby will not violate any law or conflict with or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under or result in the creation of a lien or Encumbrance on any of the properties or assets of Buyer pursuant to, its Articles of Incorporation or bylaws or any indenture, mortgage, lease, agreement or other instrument or any order, arbitration award or judgment to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected. Except for any approval required under the Act, no approval, authorization, consent or other order or action of or filing with any court, administrative agency or other governmental authority is required. for the execution and delivery by Buyer of this Agreement or such other agreements and instruments or consummations of the transactions contemplated hereby and thereby.

8.3 **Litigation**. There is no action, suit, proceeding, claim, arbitration or investigation pending, or to Buyer's

knowledge, threatened against or involving buyer or its assets which could have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement or pay the full Purchase Price and obligated Royalties to Seller.

9. **POST-CLOSING MATTERS.**

9.1 **Press Release.** After the Closing, neither Buyer nor Seller may issue a press release and/or publicize Buyer's acquisition of the Publications or other Purchased Assets except in such form and such manner, and to such extent, as mutually agreed by Buyer and Seller.

9.2 **Further Assurances.** At any time, and from time to time after Closing, at Buyer's request and without further consideration, Seller shall execute and deliver any instruments of sale, transfer, conveyance, assignment and confirmation and take such action as reasonably necessary or desirable in order to more effectively transfer, convey and assign to Buyer and to confirm buyer's title to all of the Publications and other Purchased Assets, to put Buyer in actual possession and operating control thereof and to assist Buyer in exercising all rights with respect thereto.

9.3 **Receipt of Payments and Correspondence.** Buyer and Seller each agree to promptly deliver to the other any checks, drafts, notes or other forms of payment which it receives in error.

Buyer and Seller also agree to promptly deliver to the other any mail or other correspondence received by accident or confusion.

In addition, Buyer and Seller shall deliver to the other copies of any invoices or other forms of bills it receives after Closing in respect of obligations owed various vendors.

9.4 **Notice to Subscribers.** Seller agrees that it will not at anytime before or after the Closing notify any of the subscribers to any of the Publications of the sale of any of the Publications to the Buyer.

Buyer and Seller agree to cooperate on any marketing plans used to initiate an orderly transition and explain the sale to paid subscribers.

10. **BROKERS.** Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller, that neither the representing party or parties nor any person acting on their or its behalf has incurred any liability, either express or implied, to any "broker" or "finder" or similar person in respect of any of the transactions contemplated hereby. Buyer agrees to indemnify and defend Seller against, and hold Seller harmless from, and Seller agrees to indemnify and defend Buyer against, and hold Buyer harmless from, any liability, cost or expense (including, but not limited to, reasonable fees and disbursements of counsel) resulting from any agreement, arrangement or undertaking made by such parties with any third party for brokerage or finders; fees or other commissions in connection with this Agreement or any of the transactions contemplated hereby or any claim thereof by any such third party.

11. **EXPENSES.** Except as otherwise specifically provided herein, each party hereto shall pay its own expenses incident to this Agreement and the transactions

contemplated hereby, including, without limitation, all legal and accounting fees and disbursements.

Buyer and Seller agree to equally split the legal fees of Mike Canon of *Canon, Short & Gaston* of Midland Texas who was retained to facilitate the transaction.

12. **INDEMNITIES.**

12.1 **Indemnification of Buyer.** Seller agrees to indemnify, defend and hold harmless Buyer and its shareholders, directors, officers, employees, agents and representatives (the "Buyer Group") after the date hereof and after the Closing from and against any and all claims, damages, losses, liabilities, payments, costs, obligations and expenses (including, without limitation, all reasonable legal, accounting and other professional fees and disbursements) hereinafter collectively "Damages") to the extent such Damages arise out of, result from or relate to:

A. the Retained obligations;

B. any inaccuracy or breach of any representation or warranty of Seller contained in this Agreement;

C. any breach or violation of any covenant, agreement or undertaking made by Seller in this Agreement or in any certificate or other instrument or agreement delivered by or on behalf of Seller pursuant to this Agreement; or

D. the ownership, possession, operation or use of (I) the Retained Assets at any time, or (ii) except to the extent that Buyer has expressly assumed said liability herein, the Publications, or other Purchased Assets on and prior to the Closing Date.

12.2 **Indemnification of Seller**. Buyer agrees to indemnify, defend and hold harmless Seller and its shareholders, directors, officers, employees, agents and representatives (the "Seller Group") at all times after the date hereof and after the Closing from and against any and all Damages to the extent such Damages arise out of, result from or relate to:

A. the Assumed Obligations;

B. any inaccuracy or breach of any representation or warranty of Buyer contained in this Agreement;

C. any breach or violation of any covenant, agreement or undertaking made by Buyer in this Agreement, or in any certificate or other instrument or agreement delivered by or on behalf of Buyer pursuant to this Agreement; or

D. the ownership, possession, operation or use of the Publications or other Purchased Assets subsequent to the Closing.

12.3 **Notice**. Any claim for indemnification must be made by a written notice to the party against whom indemnification is sought. Such notice shall contain in reasonable detail the particulars of the claim for indemnity and the basis upon which indemnity is claimed.

12.4 **Third Party Claims**. Each party shall cooperate with the other in determining the validity of any third party claim or assertion and in defending against third parties with respect to the same. The party seeking indemnification ("Claimant") shall promptly furnish to the party against whom indemnification is sought ("Respondent") copies of all notices, pleadings and other

documents with respect to any third party claim for which indemnification is sought. The defense of such litigation and choice of counsel with respect thereto shall be within the control of the Claimant, unless the Respondent, no later than ten (10) days before an answer or other pleading must be served, elects to undertake the defense of such a claim. Each party shall always have the right to elect to participate in the defense of any such third party claim at its sole expense.

The Respondent shall not, without the prior written consent of the Claimant (which consent shall not be unreasonably withheld), settle, compromise or consent to the entry of any judgment and/or otherwise seek to terminate any pending or threatened action with respect of which indemnification or contribution may be sought hereunder (whether or not the Claimant is a party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of the Claimant from all potential Damages arising out of such action. Each of the parties agrees not to settle or compromise any third party suit, claim or proceeding with respect to which any of the other parties has an obligation to indemnify without the prior written consent of such other party or parties, which consent shall not be unreasonably withheld. A party's failure to give timely notice or to provide copies of documents or to furnish relevant data in connection with any third party claim shall not constitute a defense (in part or in whole) to any claim for indemnification by such party, except and only to the extent that such failure shall result in any prejudice to the indemnifying party.

12.5 **Right of Set-off**. In the event that (i) any claim is asserted by a third party which is subject to indemnification by Seller, (ii) Buyer has first given Seller written notice of such claim and Seller has not settled or resolved such claim within 30 days following the notice, and (iii) Buyer has paid monies to discharge and/or defend against such claim, then Buyer shall have the right, in addition to any other rights and remedies, to offset all amounts so paid by the Buyer against any Additional Payments of the Purchase Price otherwise due to Seller. Buyer's right of set-off against such payments shall not be deemed Buyer's exclusive remedy for breach of any of the covenants, agreements, representations or warranties set forth herein.

13. **Restrictions on Transfers**.

13.1 **Agreement**. Buyer and Seller agree that for a period of ten (10) years following the Closing, Seller may not sell, assign, transfer, encumber or otherwise dispose of all or part of his interest in the "Brokerage Business" or the "Listing Business" both as defined herein, nor may Buyer sell, assign, transfer, encumber or otherwise dispose of all or any part of his interest in the Publication Business, included Related Publications, (as defined herein) without first complying with the provisions set forth below in paragraph 13.2-13.7.

13.2 **An Offer To Sell**. If either Buyer or Seller (the "Selling Party") receives a bona fide offer (the "Offer") for the purchase of all or part of the Seller Party's rights or interest in any of the Businesses described in the preceding sentence (the "Purchase Interest"), that Party

must either: (a) refuse the offer, or (b) give each other Party written notice of the Offer.

13.3 **Written Notice**. The written notice of the Offer must set out the full details of the Offer, including, among other things, the name of the offeror, the Purchase Interest covered by the Offer, the terms of payment (whether for cash or credit, and if on credit, the time, terms, and interest rate), as well as a description of any and all consideration being received or paid in connection with the Offer (including a description of all non-monetary consideration, if any, and a statement of the fair market value of any non-monetary consideration and the manner in which fair market value was determined), and any and all other material terms, conditions, and details of the offer.

13.4 **Time Period**. On receipt of the notice of Offer, the other party shall have the right and option exercisable at any time during a period of 30 days from the date of the notice, to acquire all, but not less than all, of the Purchase Interest at the same price and on the same terms and conditions as the offer, except that the purchase price for the Purchase Interest shall include cash equal to the fair market value of all non-monetary consideration described in the notice.

13.5 **Option Price**. If a Party elects to exercise the option to acquire the Purchase Interest, that Party must give written notice of this decision to the Selling Party within 30 days of the date on which the notice was given. The sale and purchase shall be closed within 30 days of the date on which the Party exercising the option gave notice to Selling Party.

13.6 **Decline Offer to Purchase**. If a Party elects not to exercise the right and option to acquire the Purchase Interest within 30 days of the date that the Seller Party gave notice of the Offer, Seller Party shall be free, for a period of 45 days from the expiration of the rights of the other Party to exercise the right and option, to close on the sale of the Purchase Interest to the Offeror on the terms and conditions of the original Offer. In the event the sale is not closed within this 45 day period, no sale may be made without re-complying with the provisions of this Restriction on Transfer.

13.7 **Clarification of Terms**. As used herein the term "Brokerage Business" refers to the Seller's current advisory and DirectMarketing services wherein the company (Seller) acts as a professional agent for oil and gas property sellers. The term "Listing Business" as used herein is defined in Section 6 of this document. The Publication Business and Related Publications are also defined herein in Section 1.A-1.C and 3.2a respectively.

14. MISCELLANEOUS MATTERS.

14.1 **Notices**. All notices, requests, demands and other communications made hereunder shall be in writing and shall be deemed duly given if personally delivered, mailed, certified or registered mail, postage prepaid, or sent by an overnight delivery service as follows, or to such other address or person as any party may designate by notice to the other party or parties hereunder:

A. If to Seller or Stockholder:

Ronyld W. Wise and/or **PLS Inc.,**

P.O. Box 3295

Midland, TX 79702-3295

B. If to Buyer:

Keith Lehto

President, PLS **Publishing, Inc.,**

511 West Ohio, #600

Midland Texas 79701

14.2 **Amendments, Waivers**. This Agreement cannot be changed or terminated and no waiver of compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by an instrument in writing duly executed by the party to be charged.

14.3 **Effect of this Agreement**. This Agreement (including the Schedules and Exhibits hereto) and the instruments delivered in connection herewith set forth and the entire understanding and agreement of the parties relating to the subject matter hereof and thereof.

14.4 **Third Parties**. Nothing expressed or implied in this Agreement is intended to or shall confer upon any person, firm or entity other than the parties hereto and their permitted assignees, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14.5 **Successors and Assigns**. This Agreement may not be assigned by any party without the written consent of the other parties. This Agreement shall be binding

upon and inure to the benefit of the parties and their respective successors, legal representatives and permitted assigns.

14.6 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

14.7 **Invalidity**. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

14.8 **Section Headings**. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14.9 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

14.10 **Exhibits and Schedules**. All Exhibits and Schedules referred to herein are hereby made a part of this Agreement.

14.11 **Dispute Resolution** Any dispute between the parties arising from the interpretation or application of this Agreement or any instrument executed pursuant hereto shall be resolved by mediation and by arbitration as provided herein.

A. **Mediation**. Any party may request mediation to be attended by parties for the purpose of resolving any dispute arising between the parties.

If a meeting is not held and/or an agreement cannot be reached on a mediation hearing, or if a mediation is undertaken, but the dispute is not resolved through mediation, any party may, within 20 days from the date set for such meeting, file a written request to resolve such dispute by arbitration.

B. **Arbitration**. Within 10 days from the date of receipt of such notice, each party shall select an arbitrator who will mutually agree on a third arbitrator. If for some reason the first two arbitrators are unable to agree on the third arbitrator, the senior Presiding Judge of the District Courts of Midland County, State of Texas shall appoint a third arbitrator.

Such arbitrators shall meet within 10 days after selection of the final arbitrator for the purpose of resolving the dispute. The arbitrators shall resolve the same and all questions pertaining thereto within 15 days from the date of the hearing.

A majority decision shall be final and binding on all parties. Each party shall bear its own expense except that expense relating to the selecting and services of the arbitrators, which shall be borne equally by the parties.

14.12 **Consent to Jurisdiction**. Buyer and Seller agree that jurisdiction for any dispute arising out of this document will be Midland County, Texas.

14.13 **Survival of Agreements**. Buyer, Seller and Stockholder each agree that the covenants, warranties, representations and agreements made herein by each

party hereto shall expressly survive the closing documents under this agreement and the transfer of the Purchased Assets between the parties regardless of any investigation made by or on behalf of any party hereto and shall remain in effect until the applicable statute of limitations shall have barred a claim therein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement on the date first above written.

SELLER:

ATTEST:

PLS, INC.

By: _____

By: /s/ Ronyld Wise
President

BUYER:

ATTEST:

Keith Lehto

_____

By: /s/ Keith Lehto
President

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1. EXHIBIT RET

RETAINED ASSETS. Subject to *Section 1.1C*, the Retained Assets will include, without limitation, all sellers rights, title and interests in and to the following which relate to and are used in connection with the listing, marketing and advisory businesses:

(1) Computer terminal, keyboard and printer defined as RWW;

(2) Computer terminal and keyboard identified as A0Q;

(3) Listing computer terminals, peripherals and printer identified as DAF and TZL;

(4) Apple Macintosh identified as Apple 1;

(5) Personal property, furniture, stereo prints and books of Ron W. Wise located in NE quarter of 6th floor office space;

(6) filing cabinet and files related to DirectMarketing projects;

(7) filing cabinet and files related to Listing Business;

(8) DirectMarketing fixtures including DM plastic frames and tombstones;

(9) All assets and fixtures located at 1331 Lamar, Suite 1410, Houston Texas.

(10) Compaq Notebook Computer and Printer

2. EXHIBIT AST

PURCHASED ASSETS. Subject to *Section 1.1C*, the Purchased Assets will include, without limitation, all sellers rights, title and interests in and to the following which relate to and are used with the Publications:

A. PUBLISHING RIGHTS: all publication rights, co-publication rights, editorial rights (including, without limitation, the rights to all previously published editorial copy in the Publications), promotional rights, copy, telemarketing scripts, licensing rights, distribution rights, printing rights, and reprinting rights, whether written or oral, express or implied, all of any kind or nature whatsoever, which relate to and are used in connection with the Publications;

B. DATA BASE & SUBSCRIBER RECORDS: all data records of current, past and potential subscribers to the Publications including their: company name, contact name, title, address, city, state, zip code, phone, fax number, accounting history and source codes as defined as "NOTES LINE" in the current Seller data base file(s) called *MemberQA and Prospec3*. See 1.1C and 7.12.

C. COPYRIGHTS: all copyrights, rights, applications, registrations and certificates for any of the foregoing, and any other proprietary and/or property rights relating to the Publications.

D. TRADEMARKS: all rights in and to all imprints, trademarks, trade names, and intellectual property rights relating to the Publications.

E. AGREEMENTS: all subscriptions, subscription relationships, advertising contracts, agreements, licenses, commitments and other arrangements of Seller as of the effective date of July 1, 1996 relating to the Publications.

F. ORDERS: all sales and new orders as of July 1, 1996 relating to the Publications

G. INVENTORY: where practical the entire inventory of the Publications, on and as of the closing Date, including, without limitation, all finished goods inventory, sheet stock and other work in process, and all back issues of the Publications including the inventory located at 511 West Ohio, Suite 1600, Midland Texas 79701.

H. PRINTING SUPPLIES: A-B Dick printing press located in Midland, all plates, plate-making materials, films, offset materials, proofs, manuscripts, duplicating masters, other illustrative or graphic material, and any and all other materials and assets used or intended for use in the creation or manufacturing of the Publications;

I. FILES & RECORDS: all files and records of Seller relating to the Publications, including, without limitation:

(1) all editorial files and records;

(2) all publishing files and records;

(3) all pre-publication and post-publication correspondence files and records;

(4) all sales and other promotional files;

(5) all correspondence and accounting files of Active and Past Subscribers to the Publications except files related to Seller's listing and advisory businesses;

(6) all corporate subscription agreements;

(7) all directories, files and records of expired, inactive or potential subscribers;

(8) all marketing, advertising, publicity and promotional files and records, including, without limitation, subscription files and records of trial or conditional subscribers, promotional letters, flyers, reply cards, sample mailing pieces, space advertising and the like (and all rights to or in any of the foregoing if owned by others);

(9) all inquiries and prospects relating to the Publications as of July 1, 1996.

J. PHONE & FAX NUMBERS: access to, for a transition period not to exceed one year, the current telephone numbers of Seller used in connection with the Publications including, without limitation, the numbers 915-687-1200, (Fax) 915-687-4200, 713-668-5596, 713-650-1822 and (Fax) 713-650-1821.

K. ACCOUNTS RECEIVABLE: all accounts receivable and not billed amounts due for subscriptions and listing fees sold after November 1, 1995 and collected after July 1, 1996 and further described in Section 7.16;

L. GOODWILL: all goodwill related to and are used in connection with the Publications.

3. EXHIBIT LIAB

EXPLANATION OF LIABILITIES ASSUMED BY BUYER

Reference Paragraph 2.2.

A. SUBSCRIBERS: All obligations to fulfill subscriptions to the Newsletters and Reports which commenced prior to and extend past the Closing Date;

B. ADVERTISING: All obligations of seller required to be performed under advertising contracts with companies listed herein including but not necessarily limited to:

i.) Five States Energy Company (Dallas)

ii.) North American Resources Co., (Billings, MT)

iii.) Swift Energy Co., (Houston)

iv) Wood Energy Co., (Houston)

v.) Equity Exchange Co., (San Francisco, CA)

vi.) Parawon Company (Mobile, AL)

vii.) Jaco Production Co., (Bakersfield, CA)

C. **REFUNDS:** fifty percent (50%) of all obligations to make refunds to subscribers to the Publications who request refunds within sixty (60) days following the closing and 100% of any such refunds requested after sixty (60) days following the Closing.

D. **RENT:** Buyer agrees to assume sellers office lease at 511 West Ohio, Suite 1600, Midland Texas.

E. **OFFICE EQUIPMENT LEASES:** Buyer agrees to assume all equipment leases currently on the books of seller including leases for the Duplicator, Macintosh, Copiers and other computer equipment.

4. EXHIBIT LIAB. PAY

Accounts Payable Assumed By Buyer

As described in Paragraph 2.2 above Buyer agrees to assume accounts payable on the invoices described herein which were incurred before July 1, 1996 but are related to Publication revenue expected to be received after July 1 and thereby the obligation of the buyer.

Accounts payable to be assumed by the Buyer include:

i.)	H/P 601 Corp. (Phones)	$2000.00
ii.)	H/P Xerox (Fax) 94	790.76
iii.)	H/P Executive (#A-4930)	1,291.13
iv)	H/P MAH 20040 Lehto Loan (House)	17,000.00
v.)	PLS, Publications Inc. (Payroll)	As Incurred
vi.)	H/P Douglas G. Vorpahl (Expo Offnet)	25,000.00
vii.)	H/P Norma R. Vorpahl (Expo Offnet)	25,000.00
viii.)	H/P Advanta Bn. Serv. Corp	15,231.95
ix.)	Outstanding Supply bills a.) Not-to include PLS DM b.) Not to include PLS, Inc.	
xi.)	All Subscriptions Para 2.2	

/s/ KL

/s/ RWW

5. BILL OF SALE

Reference 5.1A, Covenants.
See Attached.

6. EXHIBIT CONSULTING

Reference 5.1D, Covenants.
Consulting Agreement Between Ronyld W. Wise and PLS Publishing, Inc.,

See Attached.

7. EXHIBIT SECURITY AGREEMENT(S)

Reference 5.1F, Covenants.
Consulting Agreement Between PLS Inc., Ronyld W. Wise and PLS Publications, Inc.,
See Attached.

8. EXHIBIT THIRD-PARTY AGREEMENT(S)

Reference 5.2E, Covenants. Strategic Alliance Arrangement between Buyer and Seller to Speak-Well and Sell Each Others Services.
See Attached.

[License Agreement and Option Agreement WAL PLS Petroleum Listing Service /s/ RWW /s/ KL]

[Strategic Alliance with PLS Inc and PLS Publications]

10. ALLOCATION EXHIBIT

Allocation of Purchase Price

[11. STRATEGIC ALLIANCE AGREEMENT

Parties – PLS Inc and PLS Publications, Inc

Event Marketing Agreement

/s/ RWW]

BEST AVAILABLE COPY

"Con't. Description, Allocation and Payment Dates"

PLS Purchase/Sale
Consideration Schedule
Closing dated August 2, 1996

Payment Date	PLS, Inc.		Petroleum Listing Services, Inc.	Ronyld W. Wise	Total
	Publishing	Convention			
@ closing 08/02/96	$200,000		$25,000	$52,000	$277,000
11/01/96	200,000	$25,000	25,000 Variants Noted	25,000	275,000
02/01/97		25,000		25,000	50,000
05/01/97				25,000	25,000
08/01/97				25,000	25,000
11/01/97				25,000	25,000
01/01/98				25,000	25,000
Total				202,000	702,000
Consulting @$2,000 per month for 24 months (9/1/96-8/1/96)				48,000	48,000
Total	$400,000	$50,000	$50,000	$250,000	$750,000
Royalties					
Publishing Revenues: 3 Years (9/1/96-8/1/99)	5%		2%		7%
7 Years (9/1/99-8/1/06)	3%				
Convention Revenues: Houston to $500,000 ≥ $500,000		10% 3%			
4 new cities 1st 3 yrs. events		5%			

Exhibit 1C
Cont

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PLS Purchase/Sale
Consideration Schedule
Closing dated August 2, 1996

Sales Price Allocation	PLS, Inc.		Petroleum Listing Services, Inc.	Ronyld W. Wise	Total
	Publishing	Convention			
	See Asset Allocation Schedule Exhibit II				
Consulting				$48,000	$48,000
Goodwill	$ 30,000	$ 7,500	$ 5,000		42,500
Convenent not-to-compete	125,000	40,000	40,000	202,000	407,000
Option-slogan	-0-	-0-	5,000		5,000
Inventory	10,000	2,500			12,500
A/R	85,000				85,000
Furniture, Equipment & Comp.	150,000				150,000
Total	$400,000	$50,000	$50,000	$250,000	$750,000

Amendment to Asset Purchase Agreement
Publishing Rights & Business of PLS

The parties referenced in that certain Asset Purchase Agreement Publishing Rights & Business of PLS dated August 8, 1996, hereby agree to amend paragraph 6. AGREEMENT TO COOPERATE as follows:

ADD ¶ 6.1.h. Access and Inspection

Seller (owner of the *Listings*) has full rights and access to the data base during normal business hours. In addition seller has full rights and access to inspect the operations and management of the *Listing* business with twenty four hours notice twice per month.

This amendment executed this 8 date of August, 1996.

PLS Publications, Inc.

By: Keith Lehto

Name: Keith Lehto

Title: President

PLS, Inc.

By: Ronald W. Wise

Name: Ronald W. Wise

Title: President